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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME XXII

**DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES**

NOVEMBER, 1911, TO MARCH, 1912

REPORTED BY THE COMMISSION



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INTERSTATE COMMERCE COMMISSION.

JUDSON C. CLEMENTS, OF GEORGIA, Chairman.

CHARLES A. PROUTY, OF VERMONT, Chairman.

FRANKLIN K. LANE, OF CALIFORNIA.

EDGAR E. CLARK, OF IOWA.

JAMES S. HARLAN, OF ILLINOIS.

CHARLES C. McCHORD, OF KENTUCKY.

BALTHASAR H. MEYER, OF WISCONSIN.

JOHN H. MARBLE, Secretary.

January 13, 1912, Commissioner Clements' term as chairman expired; on that date Commissioner Prouty became Chairman.

February 10, 1912, Mr. Marble took the oath of office as Secretary and February 21, 1912, entered on active duty.

22 I. C. C. Rep.

INTERSTATE COMMERCE COMMISSION REPORTS.

No. 3846.

YOUNG & CUTSINGER

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted May 24, 1911. Decided November 14, 1911.

Complainants seek retroactive application of milling-in-transit privilege on logs at Evansville, Ind. The outbound shipments of lumber alleged to have been the product moved 18 months after the inbound shipments; *Held*, That a milling-in-transit privilege can not reasonably extend over so long a period; and, furthermore, a retroactive application of the privilege should not be made.

Charles D. Drayton for complainants.

N. W. Proctor for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainants are partners engaged at Evansville, Ind., in the manufacture of lumber. By petition, filed February 11, 1911, they allege that they have been subjected by defendant to unreasonable prejudice and disadvantage in their business by reason of the fact that on various shipments of logs from McKenzie and Humboldt, Tenn., to Evansville, there to be manufactured into lumber and reshipped, they were compelled to pay rates of 12 and 11 cents per 100 pounds, respectively, which rates are alleged to have been unreasonable to the extent they exceeded a transit rate of 7 cents contemporaneously in effect from other points immediately north and south of the stations mentioned and which was subsequently established from McKenzie and Humboldt. Reparation is asked.

Between April 12 and May 12, 1909, there were shipped from McKenzie to complainants at Evansville 8 carloads of logs, upon which charges were assessed at a rate of 12 cents. Between February 11 and May 6, 1909, there were shipped from Humboldt to

the language used in stating the relative character of tariff supplements. The important and controlling language reads thus:

If a tariff or supplement to a tariff is issued which conflicts with a part of another tariff or supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall specifically state [etc.].

It is to be observed that the supplement mentioned as the subject of conflict with a part of a newly issued supplement is described as a supplement to *a* tariff, and not as a supplement to *some other* tariff. The language of the rule embraces, under the conditions stated, any tariff or any supplement to a tariff which conflicts with *any* other tariff or with *any* other supplement to a tariff. It matters not whether supplements involved in such a conflict relate to different tariffs or to the same tariff. If they are to be in force at the same time, the rule requires that the part or parts of the earlier supplement intended to be canceled by the later one shall be specifically stated therein. The controversy here involves two supplements to the same original tariff, and the application of the rule is clearly seen by reading thus: "If a * * * supplement to a tariff is issued which conflicts with part of another * * * supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall specifically state the portion of such other tariff which is thereby canceled," etc. We have no hesitancy in holding that the rule does apply to the situation presented in this case and that the defendant should hereafter observe it strictly.

Section 6 of the act to regulate commerce governs the publication, filing, and posting of tariffs for public inspection, and prescribes their form and construction. The same section also confers upon the Commission authority to "prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and to change the form from time to time as shall be found expedient." In pursuance of the authority so conferred, the Commission has from time to time promulgated rules and regulations for the printing, construction, and filing of tariffs.

The tariff, to which Supplements Nos. 42 and 50 belong, was issued in February, 1906, to take effect March 1, 1906, but was not filed with the Commission until November 8, 1906. The tariff proper carried no rates on cottonseed hulls from Laurinburg to Birmingham. Supplement No. 13, effective May 15, 1908, purported to establish a rate of \$2.50 from Laurinburg to Birmingham, but the schedule failed to specify whether the rate was per ton or per hundred pounds. Supplement No. 42, effective (except as noted in individual items) August 25, 1909, specifically canceled Supplement No. 13, and, under the heading of "reissued items," named a rate on cottonseed hulls in carloads of \$2.50 per ton of 2,000 pounds from Laurinburg to

Birmingham, minimum carload weight 12 tons. Supplement No. 50 became effective October 9, 1909. On page 1 of this schedule there is an item under the heading of "Additions, cancellations, and changes (except as noted) effected by this supplement." Reference is specifically made to certain rates as being thereby canceled in full, leaving no rates in effect. It will be noted that the heading reads, parenthetically, "except as noted." On page 5 of this schedule, under "Additions, cancellations, and changes effected by this tariff," we find, in a table of rates to various stations, a rate on cottonseed hulls, in carloads, of \$3.40 per ton of 2,000 pounds from Laurinburg to Birmingham, minimum carload weight 15 net tons.

The tariff is one which was filed with the Commission prior to the promulgation of any rules or regulations relative to the form and construction of tariffs, and it is one of a class which was permitted to remain in force until such time as it could be conveniently reissued. Effective October 1, 1909, the Commission ordered that tariffs of more than five pages issued prior to May 1, 1907, might thereafter be supplemented only on certain conditions. These conditions, applied to the tariff in question, made a reissue practically necessary, and it was later superseded by a reissue. Prior to such reissue the schedule conformed as nearly as was possible to the regulations adopted after it was issued, and it clearly indicated that the rate on cottonseed hulls had been changed.

There is no evidence that the \$3.40-per-ton rate was unreasonable for the service performed. Complainant's contention involves only the interpretation of the tariff. In view of the fact that the tariff was published prior to promulgation of the rule invoked by complainant, and that it was later reissued in conformity with the rules, we are of opinion that the facts stated do not form the proper basis for an award of reparation. The complaint will therefore be dismissed, and an order will be entered accordingly.

No. 3778.
CARSTENS PACKING COMPANY
v.
UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted November 22, 1911. Decided November 23, 1911.

Rates on live stock from eastern Oregon points to Tacoma, Wash., via Northern Pacific Railway through Wallula, Wash., not shown to be unreasonable. Complaint dismissed.

John D. Fletcher and John E. Belcher for complainant.

H. A. Scandrett and A. C. Spencer for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company.

G. T. Reid for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complainant states its case as follows:

This case is one attacking the reasonableness of the rates of these defendants on live stock, carloads, from Idaho and eastern Oregon points through Wallula, Wash., to Tacoma, Wash., and all the relief asked is that the defendants reduce the same to the same basis as in effect from the same points of origin through Portland, Oreg., to Tacoma, Wash.

The Wallula gateway is a much shorter route, and because complainant has for years enjoyed the privilege of using the same and has established grazing lands for fattening stock cattle and sheep at points intermediate with said Wallula gateway and Tacoma, Wash., and because that privilege has been taken away from it by reason of lower rates being applied via a longer route, we ask that we be given the choice of routes so that, as occasion requires, we may route our shipments through Wallula, Wash., at a rate not exceeding that applicable through Portland, Oreg.

The original complaint attacked rates from points on the Union Pacific Railroad to Tacoma, Wash., but at the hearing that feature was dismissed without prejudice, because satisfactory rates, we believe, will be voluntarily established by the carriers themselves.

Again, complainant in its argument says:

In this case we do not complain particularly of these rates in and of themselves—we are complaining because, as previously stated, we believe we are discriminated against in that we can not have the choice of routes; because our cattle and sheep

are delayed in transit and are unnecessarily bruised by reason of rough and improper handling via a route much longer than is necessary, and as live stock is a highly perishable commodity and * * * a hazardous class of traffic, is it not perfectly natural that if stock has to travel a long way out of its natural route when handled through Portland, that we should try and reduce that hazard to the minimum by having it travel via the shortest and most direct route?

Complainant can not well afford to pay a higher rate than its competitors elsewhere, and therefore can not take advantage of nor earn a return on its investment in grazing lands in eastern Washington, if by reason of a rate adjustment it can, at somewhat of a disadvantage, handle via a cheaper route. These grazing lands, some of which are owned and others leased, were secured by complainant in good faith several years ago, and as there are none such on the Harriman lines which will answer the purpose we naturally want to utilize them, but do not believe it should be necessary for us to pay a premium to do so, particularly when the route via which the higher rates are in effect is shorter than the route via which the lower rates apply.

Stock moving from eastern Oregon and Idaho points to Tacoma may move either by way of Wallula and the Northern Pacific to Tacoma, or, continuing down the Columbia River to Portland, may be carried thence to Tacoma by the Oregon-Washington Railroad & Navigation Company's line. There is a difference of some 43 miles in these routes in favor of that of the Northern Pacific. The latter, however, involves crossing the Cascade Mountains, whereas the former follows almost a water grade. We are asked to establish the same rates by the short line via the Northern Pacific as obtain by the longer line via Portland. The difference at present in the rates over these two routes ranges from nothing to \$15 per car.

In the light of the extracts made from complainant's brief quoted above, and after perusal of the record, it is but fair to say that the gravamen of this complaint is not an attack upon the reasonableness of the rates via the Northern Pacific. The complainant owns, or has leased, grazing lands along the line of the Northern Pacific which it wishes to use under a feeding-in-transit arrangement, but these lands it does not find profitable to use as against the lower rate obtaining by way of Portland from points where the cattle are originally shipped. Therefore, it asks for the same rate via the Northern Pacific, so that the cattle may be stopped off to fatten en route.

The fact is, that the complainant through its negotiations with the Oregon-Washington line brought about the discrepancy which now exists in the rates by way of these two routes. Higher rates previously obtained by way of Portland than by way of the Northern Pacific. This route being somewhat longer, and there being complaint of delays on that line, the Oregon-Washington Company, at the request of the complainant, reduced its rate to Tacoma, so that whatever difference there is at the present time via Wallula and via Portland is caused by the reduction of the rate through Portland. Having secured these reductions, complainant now asks that cor-

responding reductions be made by the northern route, so that it may have both the lower rate and the grazing privilege.

In the absence of any showing as to the unreasonableness of the rates by the northern route, and in the presence of the admission by complainant that it does not complain of these rates in and of themselves, an order of dismissal will be entered in this case.

22 I. C. C. Rep.

No. 1168.

FLORIDA FRUIT & VEGETABLE SHIPPERS' PROTECTIVE
ASSOCIATION

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Nos. 3808 and 3808 (Sub-No. 1).

RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA

v.

SEABOARD AIR LINE RAILWAY ET AL.

Submitted May 25, 1911. Decided November 6, 1911.

From the facts disclosed by the record; *Held*, That the rates upon pineapples, citrus fruits, and vegetables which would result from the application of the distance tariff given in the report herein upon the lines of the Florida East Coast Railway Company, the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railway from points in Florida up to Jacksonville, when destined for points beyond in other states, would be just and reasonable; that they ought not to be exceeded for the future; and that the present rates of those carriers are unjust and unreasonable to the extent that they exceed such rates.

Louis C. Massey for Railroad Commission of Florida.

A. A. Boggs for Florida Fruit & Vegetable Shippers' Protective Association.

R. Walton Moore for Seaboard Air Line Railway and Atlantic Coast Line Railroad Company.

Alex. S. Clair Abrams for Florida East Coast Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

No. 1168 is now before us upon a supplemental petition filed by certain shippers upon the line of the Florida East Coast Railway, which is the sole defendant in the present proceeding. The original complaint was against numerous defendants and involved a general attack upon the rates imposed for the transportation of fruits and vegetables from points in Florida to various consuming markets in all parts of the United States east of the Rocky Mountains. Those rates were then stated in two parts. There was first a gathering charge from the point of origin to what were known as Florida base

points, of which Jacksonville was the principal one, applicable to traffic destined beyond those base points; and second, a rate from the base point to the consuming destination applicable to traffic which had moved by rail up to the base point. The sum of these rates constituted the through charge.

In the original case the Commission examined the two sets of rates separately. It held that rates from the base points were excessive but approved as reasonable the rates then in effect from points of origin up to the base points. That holding applied to rates upon the Atlantic Coast Line and the Seaboard Air Line as well as upon the Florida East Coast Railway. *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.*, 14 I. C. C. Rep., 476.

In a subsequent supplemental proceeding instituted by pineapple growers located upon the Florida East Coast Railway, who insisted that Cuban competition was imperiling the existence of their industry, and that the Florida East Coast Railway was maintaining rates which discriminated against the Florida pineapple, we further considered the gathering charge upon pineapples from points of production upon the Florida East Coast Railway to Jacksonville. *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552.

The gathering rates approved by the Commission in the original case had been in all instances any-quantity rates. The Commission now held in this supplemental proceeding that a distinction should be made in case of pineapples between carload and less-than-carload shipments and established a distance tariff upon the Florida East Coast Railway for the transportation of pineapples in carloads and less than carloads from the various points of origin to Jacksonville when for shipment beyond.

Shippers upon the Florida East Coast Railway now ask in the petition before us that the same rates which were established for pineapples be applied to citrus fruits; and, further, that proportionate rates per 100 pounds be applied to vegetables. In this proceeding the railroad commission of the state of Florida has intervened in favor of the complainants.

No. 3808 is a proceeding by the railroad commission of Florida against the Atlantic Coast Line and the Seaboard Air Line railways to compel the establishment of gathering rates by these railroads upon pineapples, citrus fruits, and vegetables upon a substantially lower scale than is now in effect. Schedules are filed with the petition setting forth in detail the present rates and the rates prayed for. The present rates are in all cases any quantity; those asked for are both carload and less than carload. In few, if any, instances are the rates prayed for higher than would result from the establishment of

the distance schedule applied to pineapples upon the Florida East Coast Railway; in many instances they are materially lower.

It will be seen, therefore, that in these two proceedings all the gathering charges in the entire state of Florida, except the rates on pineapples now in force upon the Florida East Coast Railway are under attack, and that these proceedings are instituted by or have the support of the railroad commission of that state.

It should be noted here that to-day no base points are used in stating these rates from points of origin upon either the Seaboard Air Line or the Atlantic Coast Line, the rate named being a through rate from the point of origin to destination; but this through rate has been in all cases constructed by adding together the rate established by us from the base point and the rate approved by us up to the base point. If, therefore, we should be of the opinion that these gathering charges were too high it would involve in some form a reduction of the through rate upon those lines by the amount of our reduction of the former gathering charge. Upon the Florida East Coast Railway the two rates are still stated separately.

The statute of Florida requires the railroad commission of that state to inquire into the reasonableness of interstate rates applying to the movement of traffic into and out of the state. If, after investigation, the commission is of the opinion that such rates are unreasonable it is made its duty to apply to the railroads operating within the state for a modification of these interstate tariffs; and if no such modification can be obtained and it still seems to the commission that the rates are unreasonable that body is instructed to institute proceedings before the Interstate Commerce Commission.

Numerous complaints were made to the railroad commission of Florida that these fruit and vegetable rates up to the base points were excessive, and that commission, for the purpose of informing itself, held investigations in all parts of the state where these defendants operate.

It found a general feeling among growers that the rates were extravagant, for the reason apparently that the industry under the present rates was not sufficiently profitable. From its investigation it reached the conclusion, as stated by its chairman, that these rates were too high. It therefore took the matter before the railroads interested and, failing to obtain satisfaction, filed its complaint No. 3808 and intervened in support of the supplemental petition which had already been filed in No. 1168.

It appeared in the original case that the gathering charges there assailed as unreasonable had been approved by the railroad commission of the state of Florida, but nothing appeared as to the circumstances under which that approval had been given. The

chairman of the commission stated upon the hearing of the present proceeding that these rates were established in 1902, that they were the result of negotiation and compromise between the railroads and the Florida railroad commission, that they were at that time fairly satisfactory to the commission, but that he and his associates were of the opinion that the volume of business had so increased since then that the rates then fixed should be reduced. This, and the alleged depressed state of the industry seem to have been the controlling reasons which induced the Florida commission to embark upon these proceedings.

The original case was heard in the spring of 1908 and was disposed of upon the basis of conditions then existing. This Commission states in its report that the rates in force had been approved by the Florida commission, and that circumstance may have somewhat influenced us in our approval of the gathering schedules at that time; but the opinion further stated that it was our duty, notwithstanding the approval of the state commission, to give these rates an independent examination, which was done at considerable length. We instituted a comparison between the rates themselves and other similar rates elsewhere existing; we inquired very fully into the conditions under which these fruits and vegetables were produced and marketed; we examined the financial condition of these railroads and the result of their operations in the state of Florida. From all this we concluded that while these gathering rates were higher than would perhaps be reasonable upon railroads where the volume of business was greater and the net financial result more favorable, still they could not be deemed excessive in view of the circumstances under which the service was rendered.

This conclusion was reached less than three years ago. No material change has taken place since then so far as this record discloses which would lead to a different conclusion if the same subject were before us to-day. The volume of business transacted has increased, but the expenses of operation have also increased to an extent which offsets the greater amount of business. It may be true that the condition of the various industries served is, on the whole, somewhat less flourishing to-day than then, but even if this were clearly shown we would not for that reason alone feel that these rates should be reduced. As has been frequently said in cases of this kind, we can not undertake to establish freight rates which will insure the production of these fruits and vegetables at a profit. Too much depends upon the state of the crop and the market. These rates can not be varied from year to year with the fluctuating condition of these industries. A reasonable rate should be established and continued so that both the shipper and the railway may know what to depend

upon. There is nothing in this record which would call for a reconsideration of our former conclusion if exactly the same question were now before us.

There is, however, a material difference in one respect between now and then. When we decided the original case, rates up to the gathering point were in all cases any quantity and in most instances this was also true from the base point to destination. In our first order in No. 1168 we established carload rates upon citrus fruits and pineapples from base points to destination which were lower than less-than-carload rates and we suggested that carload rates be also established from base points on vegetables. This suggestion was not accepted by the carriers, and as a result supplemental proceedings were brought asking the Commission to order the establishment of carload rates upon vegetables, which was done. *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552.

There are, therefore, in effect to-day by the order of this Commission carload rates upon both fruits and vegetables from base points. No carload rates, or at least none which need be mentioned, are in effect up to the base point upon the Atlantic Coast Line and the Seaboard Air Line. None were in effect upon the Florida East Coast until our order established such rates upon pineapples. Since then that company has filed carload and less-than-carload rates upon citrus fruits and vegetables, but these rates are higher than those named by us for pineapples.

It appeared in the original case that citrus fruits to some extent, and vegetables to a much greater extent, were shipped in small lots to Jacksonville and there reloaded for movement beyond. It was our impression in establishing carload rates from the base point that this would permit the movement in small lots up to the base point and the consolidation at such point, and that the carload movement would in fact be mainly beyond the base point. Such has not been the result. In order to obtain the carload rate beyond the base point it seems to be necessary for the shipper, in actual practice, to present a full carload at the point of origin, and from this it follows that the movement up to the base point at the present time is entirely different from what it was when we approved these any-quantity rates. At that time the loading was by the carrier; now it is mainly by the shipper. The loading of the cars from the point of origin to the base points is much heavier now than formerly. In 1907 the average loading of citrus fruits and pineapples upon the Atlantic Coast Line up to the base point was 215 boxes. In 1910 this loading had increased to 279 boxes. In case of vegetables the increase is even more marked. The number of cars now required to transport the same

amount of this traffic from points of origin to base points would be materially less than in 1908. Otherwise stated, it costs the shipper more to handle his business to-day and it costs the railroad less.

It should be still further borne in mind that from points upon the Seaboard Air Line and Atlantic Coast Line there are to-day through carload rates which exceed the carload rate established by the Commission from the base point by the amount of the any-quantity rate up to the base point approved by us formerly. It would seem to be evident that under the circumstances and upon the basis of our former holding carload rates should be established to-day up to the base point which are less than the any-quantity rates formerly approved and that the through carload rates from originating points upon the Atlantic Coast Line and the Seaboard Air Line should be constructed by adding to our rate from the base point, not an any-quantity rate, but a proper carload rate from the point of production up to the base point.

It is evident that this might be arrived at in two ways: We might establish carload rates less by a certain amount per box and per crate than the present any-quantity rates, or we might apply to all fruits and vegetables a distance tariff like that imposed in case of pineapples upon the Florida East Coast Railway.

The present any-quantity rates upon the Atlantic Coast Line and the Seaboard Air Line are not constructed exactly upon a distance scale, although they are approximately. It was said upon the hearing that the rates of these two carriers so interlaced with each other that to apply a distance tariff in all cases would be to force upon them rates in some instances unduly low. But the effect of such a scale of rates would be to apply from each locality by the short line whatever rate its distance from the base point gave it; and while we ought to consider the general effect upon the revenues of these carriers of the establishment of a uniform distance scale, the mere fact that some particular rate would be somewhat advanced or reduced in comparison with other rates is no valid objection to that course.

It was said that the present rates had been agreed upon by the railroads and the Florida commission in view of these competitive conditions and that the relation of rates was satisfactory. It is also true that upon this hearing no particular locality was complaining of its rates as compared with other localities; but since the conclusion of the hearing the Commission has received in several instances petitions from different points of production insisting that the rates from those points were too high as compared with other points, and the proposed schedules of the Florida commission suggest a much greater reduction from present rates at more distant than at near-by points.

The movement of these fruits and vegetables is continuous from the point of origin to destination and the distance is very considerable, being 1,000 miles and over. Ordinarily in such cases comparatively

slight differences in distance between originating points are not reflected in the rate. Here, however, the rate rapidly increases as the point of production is removed from the base point, and this presents an anomaly in rate making which perhaps calls for explanation.

As already appears from the previous reports in this case these Florida lines up to what are known as base points were originally constructed and at first operated as independent railroads. The rates fixed by these lines were substantially the local rates from producing points to Jacksonville, from whence traffic could be handled north by either rail or water to the markets upon the north Atlantic coast, and increased with the distance as local rates for hauls of that length properly might. As time went on the Florida lines were merged with lines north of the base points, and extensive markets were opened in the middle west which were reached through the Ohio River gateways, so that the service was in all its elements through transportation, but the rates still continued to be made and published by naming the gathering charge up to the base point and a delivering charge beyond.

Citrus fruits apparently come into the market at about the same time from both the northern and southern sections of Florida, and the higher charge from the more southern section is therefore a disadvantage to the south as compared with the north, but, on the other hand, climatic conditions render production in the south less hazardous than in the north. In case of vegetables the higher transportation charge from the south is more than compensated by the fact that vegetables grown in southern Florida come into bearing earlier than those grown farther north, and have therefore to an extent an exclusive and a better market.

Growers were asked whether in their opinion points of production in Florida should be blanketed or thrown into wide groups in analogy to the practice generally followed. Those in the north naturally objected, since this would involve an advance in their rates; those in the south would be glad of a lower transportation charge, but were of the opinion that under all the circumstances this would hardly be just. We share this opinion. Considering the manner in which these rates have been established and maintained in the past, remembering that the industry has developed and that land values have become fixed upon the present rate basis, it would in our opinion be wrong and uncalled for to revise these rates upon a group adjustment. Present rates are established in the main upon a distance scale, and we think any reduction of those rates should be upon the same basis.

A statement has been prepared showing with respect to every point in Florida upon the Atlantic Coast Line and the Seaboard Air Line the difference between the present any-quantity rate on citrus fruits

and pineapples, and the rate which would result from establishing upon these lines the scale prescribed by this Commission for the transportation of pineapples upon the Florida East Coast Railway. An examination of that statement shows that to apply such pineapple scale to the transportation of pineapples and citrus fruits upon the Atlantic Coast Line and the Seaboard Air Line railways would result, in the main, in carload rates somewhat lower than the present any-quantity rates, but that such reduction would not exceed what should fairly be made in view of the carload movement.

A careful consideration of the whole situation leads us to the conclusion that the distance scale established for pineapples upon the Florida East Coast Railway would be just and reasonable for the transportation of citrus fruits and pineapples to the base point upon the railroads of the Atlantic Coast Line and the Seaboard Air Line in the state of Florida.

The complainants contend that the same rate per 100 pounds should be applied to vegetables. The standard box of oranges weighs 80 pounds, the standard crate of vegetables 50 pounds, and the claim therefore is that five-eighths of the rate fixed per box of citrus fruits should be applied per crate of vegetables.

Vegetables are usually a more perishable commodity than citrus fruits or pineapples and require greater expedition and care in the handling. The loading of vegetables is also lighter. The minimum fixed by us for citrus fruits was 24,000 pounds, while that for vegetables under ventilation was 21,000 pounds; under refrigeration, 17,500 pounds.

In fixing carload rates upon vegetables from base points to northern destinations we made the rate under refrigeration about 20 per cent higher than when under ventilation.

Taking everything into consideration we are of the opinion that the vegetable rate in carloads should be per crate approximately 70 per cent of the orange carload rate per box when under ventilation and 80 per cent under refrigeration. The less-than-carload rate may exceed the ventilated carload rate by 2 cents per standard crate, up to distances of 100 miles, beyond that by 3 cents.

It is earnestly contended in behalf of the Florida East Coast Railway Company that to apply these rates to that line would be confiscatory, and considerable testimony has been introduced and much discussion had upon both sides touching the financial condition of that company.

The Florida East Coast Railway extends upon the mainland down the east side of the state from Jacksonville as far as Miami, which was originally its terminus. From thence it has since been extended, crossing from the mainland to the Florida keys and running

from key to key south. The present southern terminus is at Knights Key, but the road is nearly completed to Key West.

The construction south of Miami has been in many places very expensive, so that the total cost of that portion nearly equals that of the line from Miami to Jacksonville. At the present time but little traffic originates south of Miami, and the complainants contend that this division is operated at an actual loss. Hence, they urge, the cost of constructing this portion of the road which is of no benefit whatever to shippers from Miami and north ought not to be included in determining whether a given schedule of rates will yield a fair return upon the property. So computing, they insist that the present rates are too high and that those asked for by them will be ample.

Upon the other hand, the Florida East Coast Company insists that the entire cost of its property should be taken into account, but further claims that even if only the value of the property from Miami north is considered, still the proposed rates are confiscatory.

The financial condition of the Florida East Coast Railway has been referred to at considerable length in our previous opinions in No. 1168, and it would not be profitable to discuss that subject further here.

Taking that into account together with all the other facts and circumstances bearing upon the matter we are of the opinion that the rates suggested for the Seaboard Air Line and the Atlantic Coast Line in the state of Florida would be just and reasonable to apply upon the railroad of the Florida East Coast Railway Company. Those rates are already in effect upon pineapples and do not involve any extraordinary reductions from the rates on vegetables and citrus fruits which that company has voluntarily established.

These distance tariffs should in all cases apply to Jacksonville alone. The traffic originating upon the Florida East Coast of necessity moves through that point, and this is therefore the only base point with reference to which the rates of that company have been established or published. Jacksonville is also the only base point which has been named in the tariffs of the Seaboard Air Line. The Atlantic Coast Line moves portions of its traffic through Gainesville and High Springs, and for convenience in operation formerly stated its gathering rates in certain cases to those points as well as to Jacksonville, but the rate itself was in all cases determined by the distance from Jacksonville.

It has been noted already that the present tariffs of all these carriers state a single rate from the point of origin to final destination, thus omitting all reference to any base point. The only effect of our order directing the maintenance of certain rates to the base point is to reduce by a corresponding amount this through rate, and to require the construction of these new carload and less-than-carload tariffs

upon other base points than Jacksonville would result in reductions upon all these lines greater than those contemplated.

While carriers will be directed to establish these new gathering charges from points of production up to Jacksonville, when for beyond, they may, if they so elect, in lieu of publishing such gathering rates, establish through rates from the points of production provided those rates do not exceed the sum of the rates to and from the base point established by the Commission.

We are then of the opinion that those rates upon pineapples, citrus fruits, and vegetables which would result from the application of the distance tariff given below upon the lines of the Florida East Coast Railway Company, the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railway from points in Florida up to Jacksonville, when for beyond, would be just and reasonable, that they ought not to be exceeded for the future, and that the present rates of those carriers are unjust and unreasonable to the extent that they exceed such rates.

These rates are stated in cents per standard box of 80 pounds in case of pineapples and citrus fruits, and per standard crate of 50 pounds in case of vegetables. The carload minimum is 24,000 pounds for pineapples and citrus fruits, 21,000 pounds for vegetables under ventilation, and 17,500 pounds for vegetables under refrigeration. Vegetables are sometimes shipped in other packages than standard crates, but we shall rely upon carriers to make a corresponding adjustment in such cases without attempting to name those packages and rates here.

Distance (miles).	Pineapples and citrus fruits.		Vegetables.		
			Under refrigeration.	Under ventilation.	
	C. L.	L. C. L.	C. L.	C. L.	L. C. L.
	Cents.	Cents.	Cents.	Cents.	Cents.
Up to 40.....	9	12	7	6	8
Over 40 and up to 60.....	10	13	8	7	9
Over 60 and up to 80.....	11	14	9	8	10
Over 80 and up to 100.....	12	15	10	8½	10½
Over 100 and up to 120.....	13	16	10½	9	12
Over 120 and up to 140.....	14	17	11	10	13
Over 140 and up to 160.....	15	18	12	11	14
Over 160 and up to 180.....	16	19	13	11½	14½
Over 180 and up to 200.....	17	20	14	12	15
Over 200 and up to 220.....	18	21	14½	13	16
Over 220 and up to 240.....	19	22	15	13½	16½
Over 240 and up to 260.....	20	23	16	14	17
Over 260 and up to 280.....	21	24	17	15	18
Over 280 and up to 300.....	22	25	18	15½	18½
Over 300 and up to 320.....	23	26	18½	16	19
Over 320 and up to 340.....	24	27	19	17	20
Over 340 and up to 360.....	25	28	20	18	21
Over 360 and up to 380.....	26	29	21	18½	21½
Over 380 and up to 400.....	27	30	22	19	22
Over 400 and up to 420.....	28	31	22½	20	23
Over 420 and up to 440.....	29	32	23	20½	23½
Over 440 and up to 460.....	30	33	24	21	24
Over 460 and up to 480.....	31	34	25	22	25
Over 480 and up to 500.....	32	35	25½	22½	25½

No. 3414.
KILBURN MILLS
v.
NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY.

Submitted June 24, 1911. Decided November 6, 1911.

Storage charges were collected at New Bedford, Mass., on cotton shipped from Vicksburg, Miss., but it appears that the marks on the cotton had been so obliterated that the property could not be identified; *Held*, That storage charges can not begin to accrue until the freight has been tendered to the consignee under such circumstances that he is legally obliged to receive and remove the freight. Reparation awarded.

Warner, Warner & Stackpole for complainant.
Frank A. Farnham for defendant.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant in this case is a corporation under the laws of the state of Massachusetts, with its place of business at New Bedford, Mass., and it seeks to recover from the defendant certain storage charges alleged to have been unlawfully collected.

On December 24, 1906, 20 bales of cotton were shipped from Vicksburg, Miss., consigned to the complainant at New Bedford, routed via Yazoo & Mississippi Valley Railroad, Illinois Central Railroad, Erie Railroad, and New York, New Haven & Hartford Railroad. The defendant alleges that this shipment arrived at destination October 1, 1907; that upon its arrival the complainant declined to receive it; that it remained in the warehouse of the defendant until August 15, 1908, when it was placed in a public warehouse and remained there until September 15, 1909.

The defendant assessed storage charges on its own account amounting to \$111.98 and the public warehouse charge was \$14.85, making a total of \$126.83 which the defendant collected of the complainant.

22 I. C. C. Rep.

The public warehouse charge has been adjusted between the parties, and no claim on that account is made in the present proceeding.

The charges of the defendant were assessed under a tariff imposing a storage charge of 2 cents per bale per day for the first 10 days, 3 cents per bale per day for the next 10 days, and 4 cents per bale per day thereafter. The defendant concedes that this is excessive, and has since filed a tariff changing the free time and imposing a charge of 2 cents per bale per day. It insists in this proceeding that it should be allowed storage charges on the basis of this tariff, amounting to \$57.86, instead of \$111.98; and that is the question for determination. No part of the amount collected has been refunded by the defendant.

It will be noted that, according to the claim of the complainant, this cotton did not arrive for some 9 months after it had been shipped. When notified by the defendant of its arrival the complainant sent its representative for the purpose of examining and receiving the cotton, but upon inspection it appeared that the marks of identification, while sufficient at first, had been, by rough handling, so obliterated and removed that it was impossible to tell whether this cotton was for the complainant or not. The complainant, after inspection, concluded that it was not its cotton and declined to receive it. There were no marks upon the cotton at that time, taken by themselves, by which it was possible to identify it as the cotton of the complainant, nor does the defendant seriously so contend.

Subsequently, by tracing the history of this shipment and by partially identifying certain of the marks upon the bales placed there by the compress at which the cotton was compressed, it was made to appear that possibly, and perhaps probably, 11 of these bales belonged to the complainant, and finally, about April 9, 1909, a settlement was effected by which the complainant agreed to accept 11 of the bales as its cotton while the defendant agreed to pay the complainant for the remaining 9 bales. When payment was made under this arrangement the defendant deducted from the value of the 9 bales both freight charges upon the 11 bales which the complainant received and storage charges in the amount of \$126.83, as above.

Storage charges can not begin to accrue until the freight has been tendered to the consignee under such circumstances that he is legally obliged to receive and remove the same. If the marks upon these bales of cotton had been so obliterated through the negligence of the defendant that the property could not be identified, the complainant was under no obligation to take what might and what might not be its property.

In point of fact, the 11 bales which were finally taken were not clearly identified as belonging to the complainant, but were accepted by it in compromise.

Nor did the complainant by the terms of that compromise agree to pay these storage charges, either directly or impliedly. Nothing was said in reference to such charges, and the complainant only paid the same because they were deducted against its will by the defendant from the amount owing to the complainant under the terms of the settlement.

We find that storage charges were improperly assessed in the sum of \$111.98, and that the complainant is entitled to recover that sum, with interest from May 1, 1909.

An order will be issued accordingly.

22 I. C. C. Rep.

No. 3535.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE
OF KANSAS ET AL

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL

Submitted May 4, 1911. Decided November 14, 1911.

Defendants' present rate for the transportation of flour in carloads from Glen Elder, Kans., to New Orleans, La., when for export, found unreasonable, and lower maximum rate prescribed for the future.

John S. Dawson, Attorney General, *John Marshall* and *E. H. Hogueland* for complainants.

James C. Jeffery, *Herbert J. Campbell*, and *Martin L. Clardy* for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Natchez & Louisiana Railway Transfer Company; Natchez & Southern Railway Company; and Union Railway Company.

F. C. Dillard and *H. A. Scandrett* for Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This complaint was filed in the interest of F. M. Kaul & Sons, who are operating at Glen Elder, a local point on the line of the principal defendant in the northern part of the state of Kansas, a flour mill having a capacity of 200 barrels a day. Practically the entire output of the mill is offered to the Missouri Pacific for shipment to one point or another, little if any of it being consumed locally. The larger part of the output moves to New Orleans for export and takes a rate of 31½ cents per 100 pounds. The domestic rate is 32½ cents per 100 pounds. The gist of the complaint is that the export rate does not bear a proper relation to the domestic rate when considered in connection with the relation between the export and domestic rates enjoyed by neighboring milling points; and also that it is discriminatory when compared with the export rates available to other mills in that part of the state. It is also alleged that the export rate is unreasonable.

From Concordia, a junction point of the Missouri Pacific with other lines, about 40 miles east of Glen Elder, flour takes a domestic rate to New Orleans of 32 cents, while the export rate is 27 cents per 100 pounds. Salina is served by the Missouri Pacific, the Union Pacific, the Santa Fe, and by the Rock Island; it takes a domestic rate of 32½ cents and an export rate of 26 cents per 100 pounds. Marquette is a local point on the main line of the principal defendant and takes an export rate of 26 cents and a domestic rate of 33 cents. About 50 miles north of Glen Elder on the main line of the Rock Island are the towns of Mankato and Smith Center; they enjoy domestic rates on flour to New Orleans of 32½ cents and 33 cents per 100 pounds, respectively, and export rates of 28 and 28½ cents. It is our understanding that flour mills are in operation at all these points, as well as at other points in that part of the state, and that they compete more or less actively with the complainants both in the export and domestic trade. The mill at Glen Elder is one of the largest in that section of the state; it is running day and night and is able therefore to offer the defendants a traffic that is substantial when compared with that of its immediate neighbors. Many of these competing points are also more distant from New Orleans. Nevertheless the export rate from Glen Elder is materially higher than the export rates to that port enjoyed by the milling points competing with it.

The line of the principal defendant on which Glen Elder is situated is not a main line, but is known as its central branch. It extends to the west 55 miles beyond Glen Elder and reaches several other milling points. The export rates on flour moving from all these mills are based on the Kansas City or Atchison combination. We understand in fact that all the export rates of the principal defendant to New Orleans from mills in that part of the state are based substantially on the Kansas City combination, except from certain junctions and other points where the principal defendant has met the rates of other lines.

Under the export rate of 31½ cents over the route that the traffic usually takes from Glen Elder to New Orleans the lines participating in the movement earn only 5 mills per ton per mile. The haul is one of 1,253 miles. In *Farmers, Merchants & Shippers Club v. A., T. & S. F. Ry. Co.*, 12 I. C. C. Rep., 351, the rate on export grain from Wichita to Galveston was under consideration and the defendants were required to reduce it from 28½ cents to 25 cents per 100 pounds. Our order in the case resulted also in a reduction of the rates on flour and other grain products moving from Wichita to Galveston. The previous rates had been based on Kansas City, although that was not the route of the actual movement. The rate required by the Commission was a reduced rate adjusted to the short

line distance to Galveston of 723 miles. It yields the carriers earnings of 6.9 mills per ton per mile. It would appear, therefore, that the export rate from Glen Elder to New Orleans, when tested by the rate required by the Commission in the case cited, is not unduly high. But from the standpoint of the ton-mile earnings it is high when compared with a rate of 18½ cents on flour for export from Kansas City to Galveston, which yields earnings of but 4.6 mills per ton per mile. It is true that this is a proportional rate, but it is nevertheless the rate actually used by Kansas City flour mills. The export rate from Kansas City to New Orleans yields the still lower earnings of 4.2 mills per ton per mile. It may safely be assumed that the Missouri Pacific moves flour from Kansas City to New Orleans. If it does, that rate over its longer route would yield it but 3.6 mills per ton per mile. Compared, therefore, with the ton-mile earnings on some movements of flour from this general territory both to Galveston and to New Orleans the rate from Glen Elder is high.

Glen Elder, moreover, is surrounded, as we have seen, within a radius of from 50 to 75 miles by milling points taking materially lower export rates to New Orleans although their domestic rates to that point are on a substantial parity with the domestic rate from Glen Elder. Some of these towns are on the lines of the Missouri Pacific, which, as the originating carrier on all traffic from Glen Elder, took the burden of the defense at the hearing. The explanation it made of the lower rates from certain milling points on its own line that are reached also by the Rock Island and other roads was this: The rates to Galveston under our order in *Farmers, Merchants & Shippers Club v. A., T. & S. F. Ry. Co., supra*, were established on the basis of 25 cents per 100 pounds for a distance of 700 to 750 miles, with the requirement that one-half cent should be added for each additional 50 miles. In readjusting its grain rates to Galveston on that basis from points in this part of Kansas, the Rock Island, a defendant in that proceeding, also readjusted its flour rates from the same points to Galveston on that basis. This was done also by other north and south lines. And in order to preserve the parity of rates between the two ports they extended these reduced export rates on flour to New Orleans. The Missouri Pacific, which is a defendant here but was not a party to that proceeding, felt it necessary to meet these lower export rates on flour to New Orleans from all competitive milling points on its line in Kansas, except two or three from which it preferred to give up the traffic rather than meet the reduction and thus be compelled to lower its own rates on flour from certain other points, the rates from which would necessarily be affected. Glen Elder is a strictly local point on its line, and its rate therefore remained unchanged. The principal defendant

insists that the Glen Elder rate as well as the rates from other milling points on its central branch are proper rates, being based on the local state tariff to Kansas City plus the Kansas City proportional rate to New Orleans.

From this statement of the facts it appears that, in the readjustment of the general rates on flour from this territory to Galveston and New Orleans for export, Glen Elder has been left in a pocket and pays rates to New Orleans in some cases as much as 10 cents a barrel higher than its immediate competitors are required to pay. The complainants assert that this disadvantage is more than their business can stand, and there is undoubted force in that contention in view of the small margin of profit upon which flour is ordinarily sold for export. The action of the Rock Island and other north and south lines in putting New Orleans on a parity with Galveston was a voluntary adjustment and fairly raises the inference that under all the circumstances the new rates to New Orleans are proper and reasonable rates from this part of Kansas. It is true the Missouri Pacific contends that it accepted the reduced rates to New Orleans for competitive reasons. It is not clear, however, why the Rock Island rates themselves are not a fair test of what under all the circumstances are reasonable and proper rates from these milling points. It would seem to be clear that upon a complaint on behalf of this mill seeking lower export rates to Galveston we should be compelled, following the ruling in the case cited, to put Glen Elder substantially on a parity of rates to Galveston with its neighboring milling points, even though the result might be to short haul the Missouri Pacific; and should that be done it can not be doubted that the Missouri Pacific, following its general policy, would at once put the mill of these complainants at Glen Elder on a substantial parity with their competitors in the rates to the port of New Orleans.

Upon all the facts shown of record we have arrived at the conclusion that the export rate from Glen Elder is unreasonable to the extent that it exceeds 28 cents per 100 pounds, which we also find would be a reasonable maximum rate for the future.

An order will be entered in accordance with these findings.

22 L. C. Rep.

No. 3084.

BOARD OF TRADE OF LAREDO, TEX.,

v.

INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY ET AL.

Submitted May 5, 1911. Decided November 14, 1911.

Upon complaint that the all-rail rates on classes and commodities from points of origin in territory lying between eastern seaboard territory and Pacific coast territory to Laredo, Tex., are differentials higher than the rates, all-rail, to Corpus Christi, San Antonio, and other Texas common points, except on grain; *Held*, That section three of the act is not violated in withholding from Laredo the same rates, all-rail, as are accorded to Corpus Christi and San Antonio, and that Laredo is not entitled to common-point rates.

Rufus B. Daniel and *W. J. Sames* for complainant.

John N. King for International & Great Northern Railroad Company, and *T. J. Freeman*, Receiver thereof.

J. L. West for Missouri, Kansas & Texas Railway Company.

J. C. Maugham for San Antonio & Aransas Pass Railway Company.

W. F. Dickinson and *J. C. McCabe* for Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company.

T. J. Norton and *J. S. Hershey* for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

H. M. Garwood, *F. C. Dillard*, and *J. R. Christian* for Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, Houston, East & West Texas Railway Company, and Southern Pacific Company.

Andrews, Ball & Streetman by *R. C. Fulbright* and *W. C. Preston*, for St. Louis & San Francisco Railroad Company and St. Louis, San Francisco and Texas Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Complainant, the Board of Trade of Laredo, Tex., seeks to have accorded to Laredo the same rates as apply to Texas common points

on interstate traffic principally originating in what are termed "defined territories," alleging that the exaction of differentials above the Texas common-point rates from said territories to Laredo is unduly prejudicial to the commercial welfare of Laredo in its competition with other points, especially San Antonio and Corpus Christi. It is also alleged that the fourth section of the act is violated as to traffic which passes through Laredo en route to Corpus Christi.

All the points located within defined territories are specifically shown in tariffs issued by the southwestern tariff committee, and, broadly speaking, said territories extend from eastern seaboard territory to the Colorado-Kansas state line. From points lying between Pacific coast territory and said Colorado-Kansas line, the rate adjustment to Texas destinations is similar to that from defined territories. The extreme point on the International & Great Northern Railroad to which Texas common-point rates apply on interstate traffic originating in defined territories is Devine, Tex., 32.6 miles southwest of San Antonio, and 120.7 miles northeast of Laredo. To stations southwest of Devine, differentials varying with the distances apply. These differentials reach a maximum at Laredo, and are as follows:

Classes -----	1	2	3	4	5	A	B	C	D	E
Differentials ----	12	13	18	20	11	10	11	5	5	5

Laredo is the county seat of Webb county, and is situated on the Rio Grande River in the southeastern part of the state, 153.8 miles southwest of San Antonio and 161 miles west of Corpus Christi. It is the southern terminus of the International & Great Northern Railroad and the northern terminus of the National Railways of Mexico, and is also reached by the Texas-Mexican Railway and the Rio Grande & Eagle Pass Railway. According to the United States census, the population in 1900 was 13,429, and in 1910, 14,855. Before the use of irrigation only a small area in the territory surrounding Laredo was under cultivation, but since the land had been irrigated it is claimed that the acreage under cultivation has been largely increased. It is difficult to accurately determine from the testimony the amount of cultivated land in Webb county. One estimate is 10 per cent of the county's total area of 1,943,940 acres. Onions appear to be the chief product raised, and in 1910 about 2,200 cars, worth from \$800,000 to \$1,000,000, were shipped from Laredo and nearby points. On this traffic no differential is charged. Other principal commodities shipped are cabbage, live stock, coal, and brick. The inbound tonnage consists chiefly of such commodities as are usually required by an agricultural community.

There are two freight stations at Laredo, one termed the Laredo station and the other Laredo Transfer. The former is devoted

wholly to the movement of traffic forwarded from and received at Laredo proper; the latter to traffic bound to and from the Republic of Mexico, coming from all portions of the United States, Mexico, and Europe, and passing over the entire line of the International & Great Northern Railroad, or portions thereof, and which does not stop nor begin at Laredo station. A great deal of it comes from Galveston and from Longview Junction, Tex., on the International & Great Northern Railroad. This transfer business in no manner affects the tonnage originating at or destined to Laredo territory.

An exhibit, prepared by the auditor of the International & Great Northern, and filed in the record, shows a comparison of tonnage and revenue of the territory from Devine to Laredo in the differential territory with that of its adjacent territory from Devine to Taylor in the common-point territory.

These figures are as follows:

On interstate traffic for the years 1904 to 1910, inclusive—

	Tonnage forwarded.	Tonnage received.	Revenue on tonnage forwarded.	Revenue on tonnage received.
Devine to Taylor.....	229,523	770,852	\$443,974	\$2,788,336
Devine to Laredo.....	175,528	115,419	757,423	490,087

On both interstate and intrastate traffic for the years 1901 to 1910, inclusive—

Taylor to Devine.....	2,009,500	3,855,419	\$5,046,449	\$7,542,587
Devine to Laredo.....	700,909	714,570	1,818,997	1,797,156

From the foregoing table the tonnage forwarded from and received in the Taylor-Devine territory is, respectively, 31 and 570 per cent greater on interstate traffic and 186 and 440 per cent greater on intrastate traffic than in the Devine-Laredo territory. In connection with these figures attention is called to the fact that in the territory from Taylor to Devine, at all the important stations the International & Great Northern has competition with other lines and does not handle the entire tonnage originating, while from Devine to Laredo it handles all the tonnage except at Laredo, at which point it handles 90 or 95 per cent of the tonnage originating.

Laredo is a Texas common point in the application of the rail-and-water rates from New York and the eastern seaboard territory via Galveston, also with respect to rates from Pacific coast points and from the defined territories as to grain. This is the outgrowth of the following conditions over which the carriers claim they have no control.

Laredo became a common point via the rail-and-water route from the east by reason of the fact that the railroad commission of Texas fixed local rates from Galveston to Laredo which were the same as from Galveston to certain other points in Texas considerably north of Laredo which are accorded common-point rates. Inasmuch as it is practicable to ship from the eastern seaboard to Galveston by water and reship from that point to Laredo on an intrastate bill of lading, the carriers evidently concluded that the rail-and-water rates should be made through rates, thereby saving shippers the trouble and expense of rebilling at Galveston. In this way Laredo has become a Texas common point as to traffic from the eastern seaboard via ocean and rail through Galveston, and has been so recognized in tariff publications since 1906. From said territory, however, to Laredo, all rail, the usual differentials above the all-rail rates to San Antonio apply.

The common-point rate on grain from defined territories applies to Laredo because the railroad commission of Texas fixed the intrastate rate from Texarkana to Laredo at such a figure that it was possible to ship grain from Kansas City, for instance, to Texarkana, and thence reship to Laredo at an aggregate through rate not exceeding the through rate from Kansas City to San Antonio. The situation presented was similar to that at Galveston, and hence as a matter of convenience to shippers, through rates on grain from defined territories to Laredo were made the same as the common-point rates.

It appears that Laredo enjoys common-point rates from Pacific coast points for the reason that when the Pacific coast lines republished their tariffs in order to dispense with supplements and conform to the requirements of the Commission, they, acting under authority of general tariff concurrences by the Texas lines, eliminated the differentials to Laredo and other stations in Texas not classed as common points. This action was taken without the real consent of the Texas lines, which insisted on reinstatement of the differentials. It was not considered, however, that the volume of business to the points in question justified the expense of reprinting the tariffs, and therefore the rates have remained as published by the Pacific coast lines.

It is alleged in the complaint that on May 9, 1905, at the request of the traffic officials of the International & Great Northern Railroad, the carriers constituting through rail lines to Laredo from defined territories extended the benefit of common-point rates to Laredo on interstate business, and that on May 27, 1905, they arbitrarily rescinded their action and again placed Laredo upon a differential basis.

Complainant filed as an exhibit a letter under date of October 29, 1906, written by the second vice president and general manager of the International & Great Northern Railroad to the president of the Business League of Laredo, wherein it was stated that as long as Corpus Christi was in common-point territory there was no reason for Laredo being excluded, as Corpus Christi and Laredo compete for business in the same territory, and signifying willingness to assist in securing common-point rates for Laredo.

The present officers of the International & Great Northern Railroad Company claim that the foregoing was an ill-advised policy on the part of their predecessors in office and, in its answer, this defendant avers that while the other carriers may have, at the request of this carrier, eliminated for a short period the differentials to Laredo, it was ascertained soon thereafter that this action was hasty and ill advised, and such differentials were restored practically as soon as could be legally done.

Reference is made throughout the testimony to the competition of Laredo with Monterey, Mexico. On some commodities the rates to Monterey are lower than to Laredo, as the result of competition through the port of Tampico. The International & Great Northern Railroad Company participates in the Monterey traffic via Laredo.

It appears that the rates from the eastern seaboard, via Galveston, to common points in Texas such as Fort Worth, Dallas, Houston, San Antonio, and San Angelo, have been the subject of severe competition. The all-rail rates from New York, Chicago, St. Louis, and other points to Texas common points have been necessarily influenced by ocean-and-rail rates via Galveston from the eastern seaboard. While no direct mathematical relation exists between the rates from Chicago or St. Louis, for instance, to Texas common points, and the rates from New York via Galveston to the same points, it is nevertheless true, that owing to severe competition between the rail carriers themselves extending from Chicago, St. Louis, and other points into Texas, and owing to ocean-and-rail competition from the east via Galveston, the present Texas common-point rates from defined territories are lower than they otherwise would be.

It is not claimed that the rates to Laredo are in themselves unreasonable, but the whole contention is that Laredo is discriminated against in favor of San Antonio and Corpus Christi. An examination of the record fails to show such similar circumstances and conditions between the traffic of Laredo and San Antonio and Corpus Christi as would warrant a finding that Laredo be granted common-point rates. Only a small area of the territory between Devine and Laredo is under cultivation, and while growth and development is shown, it is evident that the tonnage and revenue therefrom is not

to be classed with that from territory north of Devine. San Antonio is the largest city in the state of Texas, having a population of nearly 100,000, and is the largest revenue station on the International & Great Northern Railroad.

As to Corpus Christi it is claimed that when the San Antonio & Aransas Pass Railway first entered that point, it encountered water competition from Galveston. Corpus Christi is not a deep-water port, but in order to meet the schooner competition this road made rates to Corpus Christi lower than common-point rates, but subsequently raised them to equal those rates. In order to compete with the San Antonio & Aransas Pass Railway the International & Great Northern gave Corpus Christi common-point rates.

It is not shown that there is any appreciable competition between Laredo, and San Antonio and Corpus Christi. In fact, the principal witness for complainant, who was also acting as its counsel, stated that the volume of business upon which differential was paid to Laredo was very small and that the effort to secure common-point rates to Laredo from defined territory was a matter of sentiment, and an endeavor to have removed the stigma which attaches to Laredo through the impression in the minds of the trade in and around Laredo that higher rates prevailed at that point, through being in differential territory, than at San Antonio. While this case is not in all respects analogous to the *Nobles Bros. Grocer Co. v. Ft. W. & D. C. Ry. Co.*, 12 I. C. C. Rep., 242, the Commission in that instance condemned the indefinite extension of Texas common point territory.

Upon the facts of record we do not find that the adjustment of which complaint is made results in undue prejudice to complainant. The complaint must be dismissed and it will be so ordered.

No. 8091.

INTERSTATE GRAIN COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted October 10, 1910. Decided November 7, 1911.

Charges assessed for transportation of a carload of oats from Hurley, S. Dak., to Chicago, Ill., exceeded the charges lawfully due under the tariffs in force. The resulting overcharge should be refunded by defendants without an order by the Commission.

Mayer, Meyer, Austrian & Platt for complainant.
S. A. Lynde for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation with principal place of business at Sioux City, Iowa. By petition, filed February 1, 1910, it alleges that it was charged an unreasonable and unlawful rate for the transportation of one carload of oats from Hurley, S. Dak., to Chicago, Ill. Reparation is sought.

On January 28, 1908, complainants shipped one carload of oats weighing 40,990 pounds from Hurley, S. Dak., to Chicago, Ill., and routed the same via Sioux City, Iowa, for cleaning in transit at the latter point. Under the tariff in force at that time such a shipment was entitled to the privilege of cleaning in transit at Sioux City on the basis of the joint rate of 18 cents per 100 pounds from Hurley to Chicago. After arrival of the car at Sioux City, the complainant decided to ship the oats straight through to Chicago without cleaning at Sioux City, and gave orders to that effect to the defendants. At Chicago charges were assessed on basis of a rate of 14 cents to Sioux City, plus a rate of 17 cents from Sioux City to Chicago, in the sum of \$127.50. Complainant asks reparation upon basis of the joint rate of 18 cents from Hurley to Chicago.

The defendants which were represented at the hearing conceded that complainant was overcharged as stated, but asserted that under

to complainants, and they gave the involved transfer to connecting lines. The action may be briefly summarized as follows: the defendant issued three tariffs, provided for the absorption of switching at each district and to industries having access to the Chicago, Burlington & Quincy, Chicago, Milwaukee & St. Paul Railway Company, freight arriving in Chicago over defendant's Mississippi River. The second, I. C. C. No. 6034, applicable to freight arriving in Chicago from the Mississippi River. Under earlier tariffs grain had been exempted from the application of this rule, but this exception was canceled. Effective January 1, 1907, a tariff, I. C. C. No. 6034, which canceled the two tariffs just mentioned, provided for the absorption of switching at each district and to industries having access to the Chicago, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, the Great Northern Railway Company, the Northern Pacific Railway Company, and the Illinois Central Railway Company. The Illinois Central Railway Company were parties to all these tariffs. I. C. C. No. 6034, effective August 28, 1906, and I. C. C. No. 6034, effective August 28, 1907, provided among the "Instructions" for the handling of grain and flour in the Chicago, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, the Great Northern Railway Company, the Northern Pacific Railway Company, and the Illinois Central Railway Company.

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No. 3295.

J. J. BADENOCH COMPANY ET AL.

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY.

Submitted January 28, 1911. Decided November 7, 1911.

Where conflicting rules which affect the rate are published effective on the same date in separate tariffs by the same carrier, the rule which will result in application of the lower rate is the one which is lawfully applicable to traffic to which such rules apply.

W. M. Hopkins for complainants.

C. C. Wright for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The collection of alleged unreasonable and unlawful rates by reason of the exaction of switching charges on carloads of grain at Chicago under conflicting provisions of defendant's tariffs is complained of in this case, and reparation is asked on the ground of improper assessment of such charges. The claims were first filed with the Commission on December 30, 1907, and August 6, 1908; and a formal petition was filed May 20, 1910.

At various times between September 12, 1906, and April 26, 1907, the complainants paid switching charges upon 76 carloads of grain moved from the tracks of the Chicago & North Western Railway Company to elevators and warehouses within the Chicago switching district. All of this grain had been transported to Chicago from points outside the state of Illinois over the Chicago & North Western Railway, consigned to certain commission merchants who are not parties to this action. The cars were held on the North Western tracks awaiting consignees' instructions for delivery; and, while so held, were sold to complainants on the Chicago Board of Trade with the understanding on the part of buyers and sellers that the cars would be delivered to complainants' warehouses on the tracks of connecting lines in Chicago without additional charge for switching, reliance being placed upon the published tariffs of defendant. The

bills of lading were turned over to complainants, and they gave the carrier delivery orders which involved transfer to connecting lines.

The tariff provisions in question may be briefly summarized as follows: Effective August 28, 1906, the defendant issued three tariffs. The first, I. C. C. No. 5958, provided for the absorption of switching charges within the Chicago switching district and to industries having their sidetracks on the lines of the Chicago, Burlington & Quincy Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company on all carload freight arriving in Chicago over defendant's lines from points west of the Mississippi River. The second, I. C. C. No. 6033, applied the same rule to freight arriving in Chicago from points east of the Mississippi River. Under earlier tariffs grain had been excepted from the operation of this rule, but this exception was eliminated by these tariffs. Effective January 1, 1907, a tariff, I. C. C. No. 6255, was issued which canceled the two tariffs just mentioned, but retained the provision for the absorption of switching charges and continued in force during the remainder of the period under consideration. The Chicago, Burlington & Quincy Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Illinois Central Railroad Company were parties to all these tariffs.

The third tariff, I. C. C. No. 6034, effective August 28, 1906, and continued in force until April 30, 1907, provided among the "Instructions in reference to switching and handling grain and flour in Chicago," the following rule:

Grain ordered to private tracks, warehouses, elevators, or industries located on connecting lines, will be subject to the additional switching charges of connecting lines.

This rule was discontinued in a tariff effective April 30, 1907, I. C. C. No. 6402, and has not since been put in force.

It is conceded that the transportation service to be performed by the carrier was not ended until the cars were given the terminal delivery directed by the consignees. It follows that the switching service did not constitute a local transaction subject to the laws of Illinois, but that the charges were subject to the act to regulate commerce.

The Commission has held in its conference rulings that where conflicting rates are contained in a tariff, the lower of the rates so published is the legal rate. Conference Rulings 50, 70, 104, and 239. By a parity of reason the same rule should be applied to conflicting rules of different tariffs which become effective on the same date and affect the rate.

The tariff of August 28, 1906, which provided for application of switching charges, remained in force only eight months, when it was superseded by an issue discontinuing the rule providing for the

switching charge. Under date of February 7, 1908, defendant's freight traffic manager wrote to the Commission with reference to the elimination from prior tariffs of the clause excepting grain from the provision for absorbing switching charges:

It was our intention, therefore, to make delivery of this grain to elevators located on connecting lines at Chicago and in the Chicago switching district on basis of our Chicago rate.

And with reference to the rule subjecting such grain to switching charges, contained in the special grain tariff:

This rule which conflicts with our tariff, issued August 28, 1906, was overlooked. After our attention had been called to the conflict in our tariffs, the rule above quoted was eliminated from our rules, on April 30, 1907.

It is clear, therefore, that the intention of the carrier coincides with our interpretation of its legal duty in the premises.

Between September 21, 1906, and April 26, 1907, complainant J. J. Badenoch Company ordered 47 cars of grain delivered from defendant's tracks to an elevator on the Chicago, Burlington & Quincy Railroad, and switching charges were assessed in the sum of \$154.50. Between September 12, 1906, and April 4, 1907, complainant Hooper Grain Company ordered 24 cars of grain delivered from defendant's tracks to an elevator on the Chicago, Milwaukee & St. Paul Railway, and switching charges were assessed in the sum of \$72. On December 20, 1906, and April 9, 1907, complainant Frank Marshall ordered two carloads of grain delivered from defendant's tracks to the industry of J. C. Klein, on the tracks of the Chicago, Rock Island & Pacific Railway, and switching charges were assessed in the sum of \$10. During October, 1906, complainant Frank G. Ely ordered three cars of grain delivered from defendant's tracks to an elevator on the Illinois Central Railroad, and switching charges were assessed in the sum of \$6.

The switching charges above mentioned, being in excess of those to which the carrier was entitled under its tariffs, should be refunded without the requirement of an order of the Commission. Upon receipt of proof that refund has been made, the complaint will be dismissed.

No. 3690.

MISSOURI & ILLINOIS COAL COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted November 4, 1911. Decided November 13, 1911.

1. The Illinois Central Railroad Company established a rule prohibiting the sending of its coal cars loaded with coal to the lines of certain designated carriers in order to retain on its own line sufficient cars to serve the communities dependent on it for fuel. Complainant attacks the rule as improperly limiting its market as a producer and dealer in coal; *Held*, That the temporary confiscation by carriers of the cars of other railroads and the placing of embargoes against cars being sent off of the lines of the owners are alike unlawful and the railroads are expected to make such rules for the return of cars as will terminate such abuses.
2. The railroads of the country are called upon to so unite themselves that they will constitute one national system; they must establish through routes, keep these routes open and in operation, furnish the necessary facilities for transportation, make reasonable and proper rules of practice as between themselves and the shippers, and as between each other.
3. An embargo may be justifiable because of the physical inability of the carrier for some reason to deal with traffic which overwhelms it, but an embargo placed against connecting carriers because of their failure to promptly return cars is not consonant with the service which the carriers constituting the through route are required by law to give.
4. Railroads are required under the act to serve the through routes which they have established with other carriers without respect to the fact that in rendering such service their equipment may be carried beyond their own lines.
5. Carriers are required to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon through routes and for the operation of such through routes, and where they have failed in this respect the Commission is empowered to determine the individual or joint regulation or practice that is just, fair, and reasonable.

Erskine Gordon, G. Bowdoin Craighill, and C. P. Ellerbe for complainant.

R. V. Fletcher, A. P. Humburg, and Blewett Lee for defendant.

22 L. C. C. Rep.

REPORT OF THE COMMISSION.

LANE, Commissioner:

This case involves the right of a carrier to establish an embargo against the shipment of coal in its own cars off its own lines at a time when its equipment is largely held by foreign roads and there is local demand for more equipment than the carrier can furnish.

The Missouri & Illinois Coal Company, which is the owner and operator of coal mines located at Wilderman and St. Clair, Ill., situated on the lines of the Illinois Central Railroad Company, asks that the Commission issue what is tantamount to a mandatory injunction against the Illinois Central Railroad, requiring that carrier in the future to furnish to complainant cars and facilities for the transportation of its coal to points where through routes and joint rates obtain, and also commanding the defendant in the future to cease and desist from establishing or maintaining embargoes similar to that put into effect by the defendant carrier on November 12, 1910, upon which date the coal traffic manager of that road issued the following notice:

ILLINOIS CENTRAL RAILROAD COMPANY,
OFFICE OF THE COAL TRAFFIC MANAGER,
Chicago, November 12, 1910.

To coal operators and dealers:

Until further notice Illinois Central and Indianapolis Southern coal cars must not be loaded with coal at mines on these roads to points on or reached via any of the following named roads, viz:

The Missouri Pacific Railway;
St. Louis & San Francisco Railroad;
Chicago & Eastern Illinois Railroad;
Chicago & Alton Railroad;
Iowa Central Railroad via Peoria;
Chicago, Rock Island & Pacific Railroad;
Chicago, Burlington & Quincy Railroad;
Wabash Railroad;
Ft. Dodge, Des Moines & Southern Railroad;
Chicago & North Western Railroad via Peoria;
Toledo, Peoria & Western Railway via Peoria;
Missouri, Kansas & Texas Railway beyond St. Louis switching limits;
St. Louis & Southwestern Railway.

Exception: Illinois Central and Indianapolis Southern coal cars may be loaded to points on the C., B. & Q. R. R. within the switching districts of Chicago and Omaha when routed via I. C. R. R. through to Chicago and Omaha.

Illinois Central and Indianapolis Southern coal cars must not be loaded with fuel coal for foreign railroads.

Embargo restrictions heretofore issued are amended in accordance with the foregoing, except that this does not amend the restrictions against individual consignees issued on account of accumulations.

This does not change rule that coal shipments for points on the Illinois Central Railroad west of Freeport, Ill., shall be routed via Illinois Central Railroad through to destination.

Illinois Central and Indianapolis Southern coal cars may not be reconsigned contrary to the foregoing.

Yours truly,

CHARLES C. CAMERON,
Coal Traffic Manager.

It is alleged that the issuance and enforcement of this embargo notice was unlawful and contrary to the provisions of the act to regulate commerce; that by reason of its issuance complainant was prevented from supplying its customers in the St. Louis district; that its business was injured, and it suffered damage to the amount of \$20,000, which it asks this Commission to award.

The position of the complainant may in general terms be stated as follows: That whenever a carrier has made through routes and joint rates with other railroads, it must under all circumstances furnish the equipment demanded by its shippers, and that the establishment of an embargo is in itself illegal. The Illinois Central makes defense that in justice to the communities dependent immediately upon it for their winter supply of coal, the embargo instituted in the fall of 1910 was a necessity; that refusal to permit its own cars to leave its own tracks was made necessary by the confiscation of its cars by other railroads; and claims that it would have been neglectful of its primary obligations to its local business had it permitted the equipment on its road to be still further drawn upon by foreign railroads which could not be induced to return the same at a time of car shortage.

It appears that the general superintendent of transportation of the Illinois Central sought to avert the necessity for the issuance of such order by entering into an agreement with other carriers that coal equipment would be promptly returned. One of the letters received in reply presents with clearness the situation with which the defendant had to deal:

MISSOURI PACIFIC RAILWAY CO.,
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RY., AT KANSAS CITY,
September 13, 1910.

Mr. J. M. DALY,

General Supt. of Transportation, I. C. R. R., Chicago, Ill.

DEAR SIR: Your personal letter of September 5 with reference to the coal situation during the coming winter:

I agree with you that there will be an extraordinary demand for coal-car equipment on account of the deplorable situation which has kept the mines idle for the past five or six months. I also agree with you that in past years the ownership of cars has been practically disregarded by many lines in the handling of coal-car equipment; at least there were about 3,000 of our coal cars away from home all last winter, which were not returned to us until after the demand for them had ceased, in April.

I think I can safely promise you that we can stop the reconsignment of coal cars delivered to us for unloading within the switching territory and will undertake to do this, so far as your cars are concerned, coming on our rails for industrial switching at St. Louis.

22 I. C. C. Rep.

We are the heaviest switching line at St. Louis, and while it is my intention to carry out this agreement in good faith, I do not propose entering into it with certain lines only and allow other lines to disregard the arrangement so far as our cars are concerned. There are certain lines, your own being one of them, that have little or no territory which our coal operators desire to reach, and consequently they have few opportunities of diverting our cars. On the other hand, there are several lines that have opportunities for getting a great many of our coal cars, and they did not hesitate last year in taking advantage of their opportunity. If they adopt the same practice this year I will, naturally, be compelled to protect this company in the only way possible—by confiscating all coal cars coming on our rails.

I trust this will not be necessary, and in the meantime I will carry out the above arrangement with you in good faith.

Yours truly,

EL. F. KEARNEY,
Supt. Transportation.

That this carrier was not alone guilty of this policy of confiscation is illustrated by tables showing the total number of coal cars owned by the Illinois Central and their location at stated periods from September 25 to December 25, 1910.

Statement showing the number of Illinois Central coal cars on tracks of roads shown and the number of their coal cars on Illinois Central tracks during the months of September, October, November, and December, 1910.

	I. C. cars on foreign roads.				Foreign roads' cars on I. C.			
	Sept. 25.	Oct. 25.	Nov. 25.	Dec. 25.	Sept. 25.	Oct. 25.	Nov. 25.	Dec. 25.
Mo. Pac.....	899	616	391	412	82	41	63	77
C. & A.....	182	213	106	46	53	49	44	54
C., B. & Q.....	379	607	476	234	21	79	39	40
C., R. I. & P.....	354	654	427	234	82	49	103	60
C. & E. I.....	92	175	36	20	15	130	102	73
St. L. & S. F.....	237	261	184	125	78	118	134	106

Statement of Illinois Central system coal cars owned and location of such cars at bimonthly periods from September 25 to December 25, 1910.

	Sept. 25.	Oct. 10.	Oct. 25.	Nov. 10.	Nov. 25.	Dec. 10.	Dec. 25.
Total cars owned.....	22,604	22,542	22,519	22,401	22,465	22,400	22,480
Total on Ill. Cent. system.....	14,906	14,225	14,172	14,509	15,006	15,521	16,120
Total on other lines.....	7,698	8,317	8,347	7,892	7,459	6,879	6,361
Total on Mo. Pac. system.....	899	808	616	480	391	568	412
Total on C., B. & Q. system.....	379	420	607	603	476	387	234
Total on C., R. I. & P. system.....	354	561	654	538	427	303	234
Total on C. & N. W. system.....	230	345	308	351	351	251	173
Total on Frisco system.....	237	332	261	275	184	153	126
Total on C. & E. I. system.....	92	142	175	00	36	22	20
Total on C. & A. system.....	182	160	213	158	106	58	46
Total on Ia. Cent. system.....	48	77	110	102	35	20	20
Total on Wabash system.....	94	123	179	244	194	164	126
Total on T. P. & W. system.....	36	25	31	17	20	6	0
Total on M., K. & T. system.....	60	73	90	81	66	62	106

This statement shows, for instance, that on October 25 the Illinois Central owned 22,519 coal cars, of which 14,172 were in the custody of the defendant and 8,347 on other lines—616 were with the Missouri Pacific, 607 with the Burlington, 654 with the Rock Island, 898 with

the North Western, 261 with the St. Louis & San Francisco, 175 with the Chicago & Eastern Illinois, 213 with the Chicago & Alton, 110 with the Iowa Central, and 179 with the Wabash. During the whole period something over 35 per cent of the defendant's equipment was off its own line, and during that same time the Illinois Central was called upon by its shippers for an average of about 500 cars more per day than it could supply. It took an average of from 32 to 57 days to secure the return of a coal car which passed from the Illinois Central's rails, whereas defendant asserts that a reasonable time for its return would have been 6 days. The foreign carriers, once they had possession of these cars, would use them for their own purposes, sending them with loads to points farther from their home tracks. The Illinois Central could not even secure cars from certain of its connections for the transportation of company fuel destined to these connecting lines. At one time 50 cars were requested for delivery to the complainant at Belleville, in which it was sought to carry Missouri Pacific coal, but the Missouri Pacific declined to furnish any cars for this purpose. At another time the complainant sought to ship 100 carloads of coal consigned for fuel purposes to the Burlington road, but that line refused to furnish cars for this purpose. It is not charged that there was discrimination practiced by the defendant as between shippers or as between carriers in and out of St. Louis. The embargo ran against all roads in the same territory. Furthermore, there is no evidence that the Illinois Central has failed to supply itself with a sufficient quantity of the proper character of equipment. The only testimony on this point is to the effect that it was equipped adequately for its own needs, even in time of car shortage, and its practice was to allow equipment to move freely from its own lines to those of its connections. During the pendency of this embargo, however, the Illinois Central not only refused to allow its cars to leave its road, but refused to load its cars for points on certain foreign roads and to make transfer thereto.

One of the earliest decisions of this Commission is cited as in point upon the reasonable course which a carrier should pursue under similar circumstances. *Riddle Dean & Co. v. P. & L. E. R. R.*, 1 I. C. C. Rep., 385:

The first ground of complaint is that the Pittsburgh & Lake Erie Railroad Company, during the period commencing September 28, 1887, and ending October 12 of the same year, violated section 3 of the act to regulate commerce approved February 4, 1887, by giving an unlawful preference to other coal mines situated along that portion of its line known as the Pittsburgh, McKeesport & Youghiogheny Railroad in not having furnished their proportion of cars daily to the Rainbow Coal Company and the Lake Shore Gas Coal Company for shipments of coal to Buffalo, in the state of New York.

By what construction the evidence in this proceeding could be held to sustain the charge we are unable to perceive. The Pittsburgh & Lake Erie Railroad is
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a local, interior road, with its terminus at New Haven, in the state of Pennsylvania, and Youngstown, in the state of Ohio; and it does not extend to Buffalo. The Pittsburgh & Lake Erie Railroad Company was not then permitting any of its coal cars to go to Buffalo for reasons which were sufficient and in no way in conflict with either the spirit or letter of any of the provisions of the act to regulate commerce. These reasons were that on account of causes, for which it was in no sense responsible and for which it could in no way be justly blamed, it then had more work than it could possibly do in transporting freights over its own line, and if it had permitted its coal cars to go to Buffalo with coal for these two mines it would have resulted in these cars being absent from its line for certainly one week and more probably ten days or two weeks, according to the evidence, and it would have thereby rendered itself less able to serve all the business over its line. If complainants had a right to insist that this company should send its cars at such a time with coal to Buffalo, then every other coal mine on its line had the same right, and this would have stripped this railroad of its equipment, leaving other business along its line to go to ruin, but none of them had any such right. The company had its legal duty to perform. Its first and most paramount legal duty to the shipping public was to make its entire freight equipment do its utmost in serving the shippers along its own line. For this purpose, amongst others, it had been chartered by the states of Pennsylvania and Ohio, and for this purpose, chiefly, it had been constructed by those who had furnished their means in subscribing to its stock. If between the 28th of September, 1887, and the 12th of November following, when, as shown by the evidence, this railroad company was unable by its utmost efforts, with all of its freight equipment added to that of the freight cars supplied to it by its connecting lines, to move promptly more than one-half of the freights as fast as they accumulated along its line, it had furnished coal cars to the mines of the Rainbow and Lake Shore Gas Coal companies to ship coal to Buffalo in order that they might obtain a better price for it than other shippers along its line were receiving at Cleveland and Ashtabula, and this, too, when it was refusing cars to all other shippers of coal to Buffalo, thus giving to complainants this exceptional advantage, it is quite possible that it would have been guilty of a violation both of the letter and spirit of section 3 of the act to regulate commerce. Under such circumstances the legal duty of this railroad company was, as the evidence shows it did, to operate its cars so as to keep them as much as possible on its line and confined to the business of its line. If, in that crisis, it could not furnish sufficient cars to all the shippers along its line for the amount of their freight, then it was its duty to have done what is shown by the evidence it did, and this was to fairly endeavor to furnish its cars to shippers of coal in proportion to their shipments over its line upon a basis that was relatively and substantially just.

No better statement of the law as it then existed could be made than that above quoted. But the act to regulate commerce has expanded since the day of that decision.

This case raises two questions of first importance: (1) What is the duty of the carriers with respect to the operation of through routes? (2) What power has been vested in the Commission to enforce the requirements of the law?

There can be little doubt as to the duty of the carriers under the present act. The commerce of the country is regarded as national, not local, and the railroads are required to serve the routes which they have established, or which they may have been required to establish,

in connection with other carriers, without respect to the fact that this may carry their equipment beyond their own lines. In the opening section of the act is to be found this mandate:

It shall be the duty of every carrier subject to the provisions of this act
 • • • to establish through routes and just and reasonable rates applicable thereto, and to provide reasonable facilities for operating such through routes, and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

It would be difficult to draft language more direct than this, or language that would more clearly express the intent of Congress that our commerce shall flow freely in established channels, without hindrance, embarrassment, or delay. Supplementing this provision, the act proceeds in this broad and inclusive language which is here subdivided for the purpose of bringing out its meaning and its direct application to the railroad practice here under consideration:

And it is hereby made the duty of all common carriers subject to the provisions of this act—

to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed.

and just and reasonable regulations and practices affecting classifications, rates or tariffs,

the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation,

the facilities for transportation,

the carrying of personal, sample, and excess baggage,

and

all other matters relating to or connected with the—

receiving,

handling,

transporting,

storing, and

delivery

of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt

receipt,

handling,

transportation, and

delivery

of property subject to the provisions of this act, upon just and reasonable terms,

and every such unjust and unreasonable regulation and practice with reference to commerce between the states and with foreign countries is prohibited and declared to be unlawful.

Reading these italicized words together, this section would read:

And it is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce just and reasonable regulations and practices affecting the facilities for transportation and all other matters relating to, or connected with, the transporting and delivery of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt transportation and delivery of property upon just and reasonable terms, and every such unjust and unreasonable regulation and practice with reference to commerce between the states is prohibited and declared to be unlawful.

The term "transportation," as defined in a previous paragraph of the same section, includes—

Cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

Further in that section of the act making it unlawful to give any undue or unreasonable preference or advantage, or to subject any particular person or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever (section 3), are to be found these words:

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Reading these provisions together, there can be no doubt as to the intent of Congress. Our railroads are called upon to so unite themselves that they will constitute one national system; they must establish through routes, keep these routes open and in operation, furnish the necessary facilities for transportation, make reasonable and proper rules of practice as between themselves and the shippers, and as between each other. The full burden of this great obligation is in the first instance cast upon the carriers themselves. In compliance with these recognized requirements of the law the carriers have undertaken to establish a body of rules and by cooperation in their enforcement insure the fulfillment of the law's demands. The duty of the initial carrier to furnish equipment for a shipment which moves on to other lines is universally recognized, and in cases where that is impracticable or deemed unwise the carriers assume to bear

the burden of the transfer from the equipment of one line to that of the other. By agreement the carriers have fixed the rental value of a car for their own purposes at 30 or 35 cents a day. That rental, together with the rules governing the movement of foreign equipment (equipment not belonging to the line upon which it stands), is presumed to secure the return to the initial carrier of its own equipment. Manifestly, however, as revealed in the investigation into car shortage of some four years ago, and as shown in this case, such rental and rules are sometimes not equal to the necessities of the situation and do not fully compel compliance with the duties imposed by the act. Instead of an orderly system of car interchange carried out in good faith, we find in this case one road stealing the equipment of its connection by way of reprisal against similar thefts of which it is the victim. The result is that the coal company in Illinois, which has undertaken by contract to serve industries in Missouri, is cut off from its market by reason of the closing of the route which the law requires the Illinois Central and the Missouri Pacific to maintain and keep open.

The complainant here was entitled at all times to send its coal to points upon the Missouri Pacific and through other connections at St. Louis to points upon their lines. It is not an adequate defense for the Illinois Central to say that this route was closed because of the dishonorable conduct of its connections. The burden rests upon these carriers to keep their highway between the mine in Illinois and the factory in Missouri open and to devise some method by which this can be done. The coal mine is entitled under the law to rely upon the carrier maintaining its route irrespective of the unfriendly relations that may exist between the carriers. The commerce of this country can not be conducted under a system of railroad operation based upon such primitive practices of warfare as reprisal and embargo. Such methods are not the expression of civilization which leads to order, system, and certainty, but are the loose and archaic methods of a disorganized industrial system.

There may be times when an embargo is justifiable because of the physical inability of the carrier for some reason to deal with the traffic which overwhelms it, but such an embargo as was established in this case is not contemplated in the law and is not consonant with the service which the carriers constituting the through route are required to give.

As already seen, the Illinois Central did not cut the through route by establishing the embargo until by negotiation it had failed to preserve itself against the unlawful encroachments of its connections. Relying then upon the fundamental law of self-protection, it kept its equipment upon its own tracks as against those roads

who sought by the law of the jungle to secure equipment for their own needs. Further, it is to be said on behalf of the Illinois Central that it was adopting a practice and applying a method which had long prevailed as between carriers in times of car shortage, and its management undoubtedly felt, as the record indicates, that it could not with justice to its own dependent public permit its line to be skinned of equipment for the benefit of other roads which may not have provided themselves with sufficient equipment for their own needs or which found it profitable to forcibly rent cars at a time of traffic pressure. In following this procedure it was acting paternally and no doubt in good faith; it was attempting to cure in an emergency a situation arising out of its own delinquency in the past, for if it had made proper conditions attaching to the return movement of its cars no such condition would have arisen as made this embargo necessary. The Illinois Central sought to protect "its own people," but in contemplation of the law there is no such thing as local traffic which enjoys rights superior to through traffic. There can be no discrimination or preference in favor of the Illinois coal buyer as against the Missouri buyer, although one may be local to the Illinois Central and the other may be on the line of a connecting carrier. That all carriers have not fully recognized this principle is not to be wondered at, inasmuch as it is, as shown by the history of the act to regulate commerce, a matter of evolution, for it was not until the amendment of 1910 that the principle was announced in its fullness.

We pass next to the second question, that relating to the power of the Commission. As has been said, the law does not assume that the Commission will take the initiative in these matters, and the carriers are called upon to establish the through routes and to maintain them. They have it within their own power to enforce rules as between each other by which this command of the law may be observed. If, however, as in this case, it is seen that the methods pursued by the carriers relating to the return of equipment are not such as to protect shippers against discrimination and injustice, this Commission may undertake to prescribe the conditions under which these through routes shall be maintained, for it is provided (section 15):

That whenever the Commission shall be of the opinion that any individual or joint regulation or practice whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable, or unjustly discriminatory or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what individual or joint regulation or practice is just, fair, and reasonable to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall conform to and observe the regulation and practice so prescribed.

Clearly the Illinois Central and its connections have not obeyed the mandate of the law as found in section 1. The remedy is found in an appeal to this Commission under section 15, as above quoted. The power here lodged in the Commission as to the control and regulation of railroad practices has been exercised but seldom by this Commission, but our authority to so regulate and control practices has been given the fullest confirmation in two masterful decisions of the Supreme Court written by Mr. Chief Justice White. *Interstate Commerce Commission v. I. C. R. R. Co.*, 215 U. S., 452; *Baltimore & Ohio R. R. Co. v. United States ex rel. Pitcairn Coal Co.*, 215 U. S., 481. It may be said that these opinions dealt entirely with the relation between carriers and their shippers, whereas the question here involved is one which makes it incumbent upon the Commission to deal with the relationship between carriers. This, however, we would do only as an incident and necessary corollary to our duty to protect the shipper. The law's requirements as to the duty of the carrier to the shipper to furnish equipment and maintain its through route carries with it necessarily the power on the part of this Commission to enforce rules which will permit the free interchange of traffic as between carriers. The carriers must keep their through routes open, and if they fail to do this because of the diversion or appropriation of cars this Commission has it within its power to prescribe the conditions upon which such through routes shall be operated.

No testimony has been taken in this case as to the rules that should be enforced, and our power would not be exercised in any event without the fullest hearing as to the effect of any order that the Commission might make would have upon the practices of the railroads of the country. Moreover we think it sufficient for the purposes of this case to present to the carriers what we regard as the law upon the subject touching their duty as between themselves and the shipper and ultimately as between each other. The carriers must make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon their through routes and for the operation of such through routes (section 1), and where they have failed in this respect and "are in violation of any of the provisions of this act" the Commission is empowered to determine the individual or joint regulation or practice that is just, fair, and reasonable (section 15).

The Commission will make no order in this case, relying upon the good faith of the carriers under the law as herein presented to make such regulations for car interchange and for the maintenance of the through routes involved as may be needed. The case, however, will be held open so as to permit an order in the event of the recurrence of a situation similar to that obtaining in 1910.

Prayer is made for an award of damages arising out of the embargo placed upon complainant's shipments. This we are constrained to deny for the reason that it was not shown by the complainant with any definiteness that it suffered damage. Its principal witness admitted that it may have been true that the complainant loaded, shipped, and sold more coal during the time the embargo was in effect than it did in the same number of months in the year before, and while stating that it was compelled to sell for less than it would have received if the embargo had not been in effect, it could not state how much less.

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No. 3796.

IN THE MATTER OF DIVISIONS OF JOINT RATES FOR
TRANSPORTATION OF COAL TO POINTS IN NORTH
CAROLINA FROM POINTS IN OTHER STATES.

Submitted May 8, 1911. Decided December 5, 1911.

1. The doctrine that this Commission has no concern with the divisions of rates which carriers make by agreement with each other has very decided limitations, and if a railroad is a shipper, or is so linked up with a shipper that a division of a rate means a rebate or a discrimination in favor of or an advantage to a shipper, this Commission may properly look into the nature of the service which the carrier gives and the division which it receives.
2. Where the industry-owned carrier, by virtue of a trackage agreement with a trunk-line carrier, conducts its operations in part over the trunk line's rails, that fact becomes an additional reason why this Commission may take cognizance of the divisions of joint rates to which the industry-owned carrier is a party.

August G. Gutheim for the Interstate Commerce Commission.

J. S. Manning and *R. O. Everett* for coal dealers of Durham, N. C.

William T. Wilson for Durham & South Carolina Railroad Company; Williams & McKeithan Lumber Company; and Chatham Lumber Company.

C. R. Capps for Seaboard Air Line Railway.

T. S. Davant for Norfolk & Western Railway Company.

J. H. Stagg for Durham & Southern Railroad Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Complaint being made to the Commission by certain coal dealers in Durham, N. C., that one of the dealers in that city named G. M. Mason was selling coal for \$5 a ton while others were compelled, in order to make a profit, to sell for \$6 a ton, the Commission instituted this investigation on its own motion, and upon hearing the following facts were developed:

Mr. Mason's coal is delivered at East Durham, which is a small station on the line of the Durham & South Carolina Railroad, situated slightly over 1 mile from the city of Durham. This road is

owned by the Williams & McKeithan Lumber Company, which also owns all of the stock in the Chatham Lumber Company, which has its mill at East Durham and on whose land Mason has his office and yard. The theory of the complaint upon which this investigation was instituted was that Mason was simply an agent for the Williams & McKeithan Lumber Company, who were the real coal dealers, and that they were able to sell their coal at less than cost because of an extraordinary division of rates on such coal made with the Norfolk & Western Railway. The coal in which Mason deals is drawn from the New River and the Kanawha districts and is hauled by the Chesapeake & Ohio, Norfolk & Western, and Durham & South Carolina lines at a rate of \$2.20 a ton from the New River district and \$2.30 from the Kanawha district. The division on coal from the New River district is here given:

Road.	From—	To—	Distance.	Rate per ton.
			Miles.	Cents.
Chesapeake & Ohio Railroad.....	Mines	Lynchburg, Va.....	221	81
Norfolk & Western Railroad	Lynchburg, Va.....	Durham, N. C.....	116	77
Durham & South Carolina Railroad.	Durham, N. C.....	East Durham, N. C...	1	62
				2.20

The coal dealers in Durham pay the same rate as does Mason from the same point of origin—\$2.20 a ton. No evidence could be found that the published rates were departed from or that any refund was given to Mason. He admitted that he had gone into the coal business at the solicitation of officials of the Durham & South Carolina Railroad, but that he had been engaged for some eight years previous as a wood dealer. He paid the same price for his coal at the mines as did the other dealers, paid the same freight rate, and after paying 50 cents a ton for team delivery in Durham made a profit of about 50 cents a ton, selling his coal at \$5 as against the rate of competitive dealers of \$6 per ton. His explanation of his ability to do this was that his expenses were so much less than those of his competitors. He employed no bookkeeper, paid no rent, used his sons to help him, and took his coal from a chute provided for him by the railroad. There is indication in the record that the price of \$6 was agreed upon by the coal dealers in Durham as a reasonable selling price. At any rate, if there was no such agreement, either formal or informal, the dealers regarded this figure as yielding no more than a reasonable profit.

The Commission could find no identity of interest between Mason and the Durham & South Carolina Railroad, nor between Mason and the Chatham Lumber Company or the Williams & McKeithan

Lumber Company. Examination was made of the books of the railroad company and of both lumber companies without discovering that either one of the three had any interest in Mason's business or that any part of the division of the rate received by the Durham & South Carolina went into Mason's pocket. Both the testimony and independent research lead to the conclusion that Mason's success in selling coal in the Durham market does not arise out of any preference given to him by any railroad. It is quite manifest that the division of the Durham & South Carolina does not equal the difference between \$5 and \$6 per ton. Therefore we are justified in saying that the suspicions of the rival coal dealers of Durham that by the division given to the Durham & South Carolina it was enabled to recoup the losses which Mason was supposed to have made on his coal are not well founded. Moreover, it can be seen from the figures presented that with Mason's simple methods of doing business he can profitably handle his coal at the price for which it is sold. It is uncontradicted that he buys the coal at from \$1.40 to \$1.80 per ton at the mine. This, added to the \$2.20 or \$2.30 rate, would allow him to pay 50 cents a ton for hauling and still give a modest margin of profit.

We are unable to find that any preference or advantage is given to Mason by reason of this arrangement between the carriers; but why this division? Why is the Norfolk & Western willing to allow for so short a haul so large a proportion of the through rate? The only answer given by this carrier is that it was doing but a small proportion of the coal business of Durham and that by Mason's enterprise at East Durham its tonnage was largely increased.

It has often been said by this Commission that the law has no concern with the divisions of rates which carriers make by agreement with each other; but this principle has very decided limitations. If a railroad is a shipper, or is owned by a shipper, or is so linked up with a shipper that a division of a rate means a rebate or a discrimination in favor of or an advantage to a shipper, the Commission may properly look into the nature of the service which the carrier gives and the division which it receives.

Let us regard with some scrutiny the nature of the Durham & South Carolina road. It has, we find, no track of its own in Durham excepting a spur off the Seaboard Air Line. By trackage agreement with the latter it runs out of Durham over the Seaboard's tracks for a little more than a mile to East Durham. There it leaves the Seaboard's tracks and turns on to the line of the Durham & Southern Railway under trackage rights, and after passing over these rails for a mile and a half or more turns at a point known as the Durham & South Carolina Junction on to the Durham & South Carolina Road

the Seaboard Air Line into Durham. For a mile, therefore, out of Durham three roads run over the Seaboard Air Line's rails, viz, the Seaboard, the Durham & Southern, and the Durham & South Carolina. The Durham & South Carolina, as we have seen, is owned by a lumber company which owns the chief industry on the road. It gains access to Durham over the line of another carrier—a perfectly legal and proper thing of itself—and at Durham connects with the Norfolk & Western and from that road takes traffic which it then hauls back over the Seaboard's rails to its own mill and thus becomes a common carrier having joint rates to East Durham.

In all this there is nothing irregular or illegal, but the Norfolk & Western, as well as the Seaboard, must be on notice in dealing with this road, the prime purpose of which is to serve its own industry, that they are dealing ultimately with a shipper, for we look behind the railroad to the lumber company.

For what is at present but a mere switching service of a little more than 1 mile, and so recognized in its relations with the Seaboard, the Norfolk & Western allows the Durham & South Carolina \$24.80 on a 40-ton car, while for its own haul of 160 miles the Norfolk & Western receives but \$30.80. The car being destined to East Durham, evidently the Durham & South Carolina is being paid for something other than the hauling and placing of Mason's car. If this road is reasonably entitled to 62 cents for the service it gives, it surely must follow that the Norfolk & Western and the Chesapeake & Ohio are grossly underpaid for the service which they render, and the Durham coal merchant may well argue that if the Norfolk & Western can afford to pay 62 cents as the division for the haul out to East Durham the through rate of \$2.20 is altogether excessive and unreasonable.

The plain fact is that the Norfolk & Western is paying the Williams & McKeithan Lumber Company, which owns this road, an excessive rate for the haul from Durham to East Durham, and thus pro tanto reduces the cost to which the lumber company as a shipper of lumber is put. Manifestly if there were sufficient coal traffic on the Durham & South Carolina under such divisions to support that road the lumber company would ship its lumber free of cost, and not only free of cost over its own line, but over that of the Norfolk & Western as well; that is to say, that by securing sufficiently high divisions upon incidental traffic the owner of the industrial road may have its own freight bills over other railroads paid by these roads themselves. The matter is put in this extreme form to illustrate the logical result of such an "interlocking" of railroad and industry. Wherever an abnormal division is allowed to a railroad which is tied up with an industry there results an indirect and hidden rebate

to a shipper because of his ownership of the railroad. We must hold in this case that to the extent that the division here is abnormal it is a preference or advantage given to the Williams & McKeithan Lumber Company and one of its subsidiary corporations, the Chatham Lumber Company, for it is plain that whatever the railroad receives from its connection over and above what it is entitled to *as a railroad* reduces by just so much the rates on lumber and all else which the Williams & McKeithan Lumber Company as the head center of the whole lumber railroad enterprise must pay.

The division on coal at the station known as Durham & South Carolina Junction, where that road branches from the Durham & Southern (something less than 2 miles beyond East Durham) is 69 cents out of a rate of \$2.45 per ton. This doubtless has been made as a division on coal for company fuel, for at this point the Durham & South Carolina has its coal sheds. And this would be an easy method of avoiding the decision of the Commission in *In the Matter of Restricted Rates*, 20 I. C. C. Rep., 426, wherein it has been held that the same rates must be made on company fuel as on commercial fuel, but that a carrier might properly accept the fuel at any point on its own road and agree with its connection upon the division of the through rate. Thus while the commercial rate to Durham is \$2.20, the two trunk line carriers receive but \$1.76 on coal destined 3 miles farther on an industrial line. The Durham & South Carolina secures a division but slightly less to East Durham—a division, however, confessedly greater than it costs to haul the coal back into the main city of Durham by wagon.

Turning again to the relation between Mason and these carriers, it is in evidence that Mason was solicited to establish himself upon the tracks of the Durham & South Carolina by officials of that road. They did this, it would appear, after the Chatham Lumber Company itself had proposed to the Norfolk & Western that it would go into the coal business in East Durham and had been warned by the traffic manager of the Norfolk & Western that this would be dangerous under the act to regulate commerce. We are justified in the belief that the coal business was not seductive to the Chatham Lumber Company, but that it was the fine division of this rate that made this enterprise at East Durham so attractive to the railroad owned by the same concern that owned the lumber company.

The Chatham Lumber Company gives to Mason the use of a portion of its land for a coal dump. The rental value of this piece of land will be very small. It also furnishes the use of its spur track. This any railroad would doubtless give. In effect, however, it has set Mason up in business as a coal merchant, although it has nothing whatever to do with his business excepting that its employees occa-

sionally help him with his correspondence, and this is understandable, because he is maimed. There is but one condition which the Chatham Lumber Company makes for the consideration shown him—that he shall have his coal routed via the Norfolk & Western and the Durham & South Carolina roads—and to this condition he conforms most agreeably, for it is not his concern what the interest of the Chatham mill may be in having the coal so routed provided his rate is satisfactory.

Without proceeding further into an analysis of this matter, it may be flatly said that it does not smack of good faith. The Norfolk & Western and the Durham & South Carolina may make the same rate to East Durham as to Durham. The Durham & South Carolina, being owned by a corporation which owns the main industry on that line, can not receive an allowance such as that here given without its being in effect a rebate on the traffic of the allied industry which moves over the Norfolk & Western for or to the Durham & South Carolina.

The traffic situation at Durham is complicated still further by an arrangement between the Durham & Southern and the Seaboard Air Line. The Durham & Southern, as we have seen, runs from a point on the Atlantic Coast Line named Dunn northwesterly to a connection with the Seaboard at Apex and thence to Durham, the distance from Apex to Durham being approximately 20 miles. The record plainly shows that the Norfolk & Western and the Durham & South Carolina are meeting opposition in the carriage of coal to Durham and East Durham which arises out of the alliance between the Seaboard and the Durham & Southern. The latter is owned and controlled by the same interests which control in the management of the American Tobacco Company, and which also have large outside interests, such as the Southern Power Company and large cotton mills in this territory. Out of 6,000 shares, B. N. Duke and J. B. Duke own 5,578 shares. This road has a remarkable traffic arrangement with the Seaboard by which the latter surrenders the position of terminal carrier of a large portion of the Durham traffic both in and out to the Durham & Southern, which for its 20-mile haul receives 40 per cent of the Seaboard's division on through business via the Virginia gateway. No such arrangement would be made but for the fact of a community of interest between the Durham & Southern and the Duke interests. This is not a matter of inference but of direct testimony in the record. The traffic manager of the Seaboard frankly speaks of this as a "preferential traffic arrangement." Being asked at the hearing if it was not unusual for a carrier to make a joint rate from and to a point in connection with a competing line where

they have their own rails in and out of that point, the traffic manager of the Seaboard replied:

Well, it is unusual, unless there is competition to justify it.

Q. The reason for doing it here in the case of the Durham & Southern is because they control an immense tonnage and would have sent it by the Coast Line?—A. In competition with the Atlantic Coast Line.

Q. You had in mind, I presume, then, the American Tobacco Company's traffic?—A. That and the business of other interests that are probably in a way allied with the American Tobacco Company.

The effect of this arrangement upon the Seaboard's freight earnings is illuminating. The Durham & Southern, under its trackage agreement with the Seaboard, began operating from Apex into Durham about July 1, 1906. During the year ending June 30, 1906, the Seaboard's revenue on business into and out of Durham amounted to \$557,196.48. The effect of the new arrangement with the Durham & Southern was to decrease the Seaboard's revenue on its Durham proper business to \$376,974.91 in the year ending June 30, 1907, while in the following year there was a further decline, the total being only \$256,158.98. Based upon the 1906 figures, the Seaboard's loss on account of the new arrangement was \$180,221.57 in the year to June 30, 1907, and \$301,037.50 in the year to June 30, 1908, upon the business handled by it direct to and from Durham. The Seaboard's revenue from Apex interchange business during the year ending June 30, 1907, was \$226,117.62, which resulted in a net gain to the Seaboard of \$45,896.05 over and above the loss at Durham proper.

But in the succeeding year the Apex interchange produced only \$241,116.37 revenue, leaving the Seaboard with a net loss of \$59,921.13. Apparently the effect upon the Seaboard of its arrangement with the Durham & Southern was a net decrease in revenue in the years immediately following the initiation of the arrangement. In the consideration of these figures it must be borne in mind that the natural Seaboard route between Durham and Virginia cities is through Henderson, the haul of the Seaboard from Durham to Henderson being 41 miles. When, however, the Seaboard handles such Durham and Virginia cities' traffic in connection with the Durham & Southern via Apex it becomes necessary for the Seaboard to haul the traffic between Henderson and Apex, a distance of 58 miles. To sum up, we may say that the Seaboard permits the Durham & Southern to enter Durham on Seaboard rails, gives to the Durham & Southern 40 per cent of its revenue on Durham-Virginia cities' business, and hauls such business some 17 miles farther than if it had handled it into Durham over its own rails in the first instance. In return it gets the additional tonnage via Apex, but, as already shown, the revenue on such tonnage does not equal the revenue lost

on the Durham direct business. Evidently the "preferential traffic arrangement," so frankly spoken of by the Seaboard's traffic manager, resulted in a loss to his company, unless it contemplated preferential arrangements beyond that shown in the record. There is a short way of stating this proposition. It is this: The Seaboard Air Line bought the business of an industry, or of a group of financiers having large traffic at their control, by allowing its traffic at one point to be taken away from it by a road under a management allied to that of the industry.

Here, then, at Durham we have two great trunk-line railroads bidding for traffic into Durham by allowances to industrial roads. They voluntarily reduce their own revenue through divisions with these industrial roads for the sake of gaining traffic. The Norfolk & Western lost through the Seaboard-Durham & Southern alliance some of its coal traffic, and this it meets by forming a through route with the Durham & South Carolina. The large stockholders in the Durham & Southern by their control of industries induce the Seaboard Air Line to build up the traffic of a rival road, the Durham & Southern. If there is a dollar over and above the actual cost of transportation in the 40 per cent division which the Durham & Southern gets it goes into the pockets of the Dukes; it is not a rebate given to the American Tobacco Company, but confessedly is an advantage growing out of the relation between the Dukes and the tobacco interests, for if the Dukes did not have freight to route the traffic manager of the Seaboard says that no such arrangement would have been made.

There may be some doubt as to the power of the Commission to correct a situation such as this, but whatever power the Commission has it should exercise. An order will be issued against the Seaboard Air Line citing it to show cause why its rates into and out of Durham on all classes and commodities should not be reduced, and against the Norfolk & Western that it show cause why its rate on coal into Durham should not be reduced.

22 I. C. C. Rep.

No. 3521.
RAYMOND B. SCUDDER
v.
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted December 12, 1910. Decided December 5, 1911.

Complainant procured from the initial carrier two bills of lading covering a consignment of sugar, for the carriage of which two cars were necessary; upon the car containing the balance lot, weighing 24,205 pounds, the carriers assessed charges at the carload minimum weight of 33,000 pounds; *Held*, That charges were properly assessed under Rule 8 of western classification.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

Since making its report in the above case, 21 I. C. C. Rep., 60, the Commission has been the recipient of many communications in reference to what was therein said relative to the assessment of demurrage charges on a car or cars containing part of a consignment of goods when one or more such cars arrive at destination in advance of cars containing the balance lot of the consignment, all being covered by one bill of lading.

The discussion and finding in that portion of our opinion referred to was not necessary to a disposition of the case then before us. While the record suggests a possible inequity, it presents no issue requiring a finding upon the above question or justifying an expression of opinion in respect thereto. The question directly involved in this case related to the basis upon which freight charges should have been collected upon the shipment of the balance of one single consignment constituting less than a carload. We shall therefore dispose of the question upon the facts of record, which may be restated as follows:

On January 3, 1910, complainant shipped from New Orleans, La., to Sioux City, Iowa, 169 barrels of sugar. Complainant prepared a so-called dray ticket, reading as follows:

Received in good order from R. B. Scudder on board the Texas & Pacific Railroad:

Shipper's order notify; allow inspection; Cudahy Packing Company, Sioux City, Iowa, via Missouri Pacific Railroad, Union Stock Yards station.

	Barrels.
Nellie No. 152-----	48
Nellie No. 153-----	56
Nellie No. 154-----	65
Total -----	169

This dray ticket was receipted by defendant Texas & Pacific, and 104 barrels of sugar were loaded into one car and 65 barrels into another. At the commercial, or "down-town," office of the Texas & Pacific the receipted dray ticket was exchanged for two bills of lading, one for each car, the bills of lading bearing the same date as the dray ticket and showing the same consignor, consignee, destination, and routing. Upon arrival at destination freight charges were collected upon a weight of 38,361 pounds for the car containing 104 barrels, and upon the minimum carload weight of 33,000 pounds for the car containing 65 barrels, the actual weight of which was 24,205 pounds. Complainant contends that charges upon the second car should have been based upon the actual weight.

Western classification No. 48, I. C. C. No. 6, Rule 8, in effect at the time, provided as follows:

When the minimum carload weight or more of one article is shipped in one day by one consignor to one consignee, covered by one bill of lading, the established rate for a carload shall apply on the entire lot, although it may be less than two or more full carload lots. * * *

Under this rule, to obtain the application of the carload rate on the actual weight of the part carload the entire consignment must move upon one bill of lading. Complainant's action in securing a bill of lading for each car rendered the rule inapplicable, and each carload became a separate shipment, subject to the prescribed minimum weight per car. The charges imposed were therefore proper, and reparation will not be awarded.

We find nothing in defendant's rule that is either unreasonable or unjustly discriminatory. The complaint will therefore stand dismissed as of the date of the original order, with the understanding that upon the question of demurrage charges, possibly accruing under a contingency of the nature suggested, we express no opinion.

No. 2953.

ROSENBAUM BROTHERS

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

No. 2953 (Amendment No. 1).

SAME

v.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY
COMPANY ET AL.

Submitted April 6, 1910. Decided November 13, 1911.

Carriers having adjusted their rates so that coarse grains might move from Omaha and surrounding territory to Atlanta and other points in the southeast via the several Mississippi River and Ohio River crossings, defendant lines south of Cincinnati and Louisville provided that their rates south of those crossings would be higher upon shipments moved by their connections through Chicago or any Cook county point than upon shipments from same points of origin to same destinations that were not permitted to move through Chicago or any other Cook county point; *Held*, That the traffic, the point of origin and destination, and the rate to Cincinnati and Louisville being the same, defendant lines south of Cincinnati and Louisville may not close the route of their connections through Chicago by demanding a higher rate for the same service upon shipments moved via Chicago than they demand upon the same shipments moved via other junction points; and *Held further*, That such adjustment is unjustly discriminatory against Chicago shippers, Chicago, and the carriers forming the route via Chicago. Reparation awarded.

W. M. Hopkins for complainant.

W. G. Dearing and *W. A. Northcutt* for Louisville & Nashville Railroad Company.

R. Walton Moore for Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; and Nashville, Chattanooga & St. Louis Railway Company.

G. W. Kretsinger for Chicago, Indianapolis & Louisville Railway Company.

M. R. Waite for Cincinnati, Hamilton & Dayton Railway Company.

Henry C. Starr for Chicago, Cincinnati & Louisville Railroad Company.

Winston, Payne, Strawn & Shaw for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

In this proceeding the vital point in controversy is whether a carrier maintaining a proportional rate on traffic reaching its line via one or more specified routes may at the same time maintain a higher proportional rate on the same traffic from the same point of origin that comes to it at the same point via the same connecting carrier, but over another route formed by connecting carriers and is destined to the same point of consumption.

The particular traffic to which the complaint relates is coarse grains moving from a producing territory west of the Mississippi River, in which Omaha may be taken as a fairly typical shipping point, to the so-called southeastern territory, comprising the states of Alabama, Georgia, Florida, a portion of South Carolina, and a small part of Tennessee. In this region Atlanta, for the purposes of this report, may be taken as a representative point of consumption. Grains destined to that point from Omaha may cross the Mississippi River at Memphis or the Ohio River at Cairo, Evansville, Louisville, or Cincinnati. The record shows and the fact is conceded that for many years the rates through Memphis have controlled the traffic, that being the short line to the southeast. Those rates have been the foundation rates upon which the rates over the Ohio River crossings are based. The efforts of the carriers south of the Ohio River and the desire of the Ohio River markets to share in the traffic are said to have resulted in a general demoralization of rates until those crossings were put on a parity with the Memphis crossing under the rate relation now in effect. But with the details of these rate contests we are not now concerned; it will suffice for our present purposes to understand clearly what the present relation of rates is as between Memphis and the Ohio River crossings.

The through charge on coarse grains from Omaha to Atlanta over the Memphis route is 34 cents, made up of a proportional rate of 14 cents to Memphis and a 20-cent rate beyond. In order therefore that Cairo and Evansville, hereinafter referred to as the lower crossings, might participate in the movement of coarse grains to the southeast, it was necessary that the through charges over those routes should not exceed the through charges over the Memphis crossing. The local rate of the lines south of all the Ohio River crossings to Atlanta is 24 cents per 100 pounds, and, as the carriers south of the lower crossings declined to shrink this rate, it became necessary for the carriers north of the lower crossings, in order to get any part of the traffic, to establish a proportional rate of 10 cents to Cairo and Evansville, thus making a through charge of 34 cents per 100 pounds. And this they did, the carriers from Omaha to St. Louis having agreed to accept

No. 2953.

ROSENBAUM BROTHERS

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

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The particular traffic to which the complaint relates is coarse grains moving from a producing territory west of the Mississippi River, in which Omaha may be taken as a fairly typical shipping point, to the so-called southeastern territory, comprising the states of Alabama, Georgia, Florida, a portion of South Carolina, and a small part of Tennessee. In this region Atlanta, for the purposes of this report, may be taken as a representative point of consumption. Grains destined to that point from Omaha may cross the Mississippi River at Memphis or the Ohio River at Cairo, Evansville, Louisville, or Cincinnati. The record shows and the fact is conceded that for many years the rates through Memphis have controlled the traffic, that being the short line to the southeast. Those rates have been the foundation rates upon which the rates over the Ohio River crossings are based. The efforts of the carriers south of the Ohio River and the desire of the Ohio River markets to share in the traffic are said to have resulted in a general demoralization of rates until those crossings were put on a parity with the Memphis crossing under the rate relation now in effect. But with the details of these rate contests we are not now concerned; it will suffice for our present purposes to understand clearly what the present relation of rates is as between Memphis and the Ohio River crossings.

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8 cents, leaving to the carriers from St. Louis to Cairo and Evansville a division of but 2 cents. That adjustment on movements through St. Louis and over the lower crossings put the Cairo and Evansville routes on an equality with the Memphis route to Atlanta.

A different sort of adjustment was necessary to put the upper crossings, Louisville and Cincinnati, on a parity with the Memphis crossing and with the routes through Cairo and Evansville. There was no reason why the lines carrying the traffic from Omaha to St. Louis, on a division of 8 cents out of the 10-cent proportional rate from Omaha to Cairo and Evansville, should be interested in having the traffic go through the upper rather than through the lower crossings. They therefore declined to accept less than their 8-cent division on coarse grains moving to the southeast through the upper crossings. On the other hand, the lines from St. Louis to Cairo and Evansville were not willing, on account of the longer haul, to extend to Louisville and Cincinnati the 2-cent division that they were receiving to Cairo and Evansville. For that service they demanded 4 cents per 100 pounds. This resulted in a proportional rate of 12 cents from Omaha, through St. Louis, to Louisville and Cincinnati, as compared with the 10-cent proportional rate through St. Louis to Cairo and Evansville. The charge of 12 cents north of the river, added to the local rate of 24 cents south of Louisville and Cincinnati, made a through charge of 36 cents per 100 pounds to Atlanta, as compared with the through charge of 34 cents through Memphis, Cairo, and Evansville. In order, therefore, that the rates over the routes through the upper crossings might be equalized with the rates over the lower crossings, the carriers south of Louisville and Cincinnati concluded to accept 2 cents per 100 pounds less than their local rates to Atlanta. This shrinkage of the local 24-cent rate south of those crossings yielded a rate applicable on through traffic of 22 cents per 100 pounds, which, added to the 12-cent proportional rate north of the river, made a through charge over those routes of 34 cents, and thus put them on a parity with the routes over the lower crossings and with the route through Memphis. In this manner the competition through the Memphis gateway was extended back, first through Cairo and Evansville and then through Louisville and Cincinnati.

The shrinkage of 2 cents in their local rates south of Louisville and Cincinnati is restricted by specific provision in the tariff that it will not be applied if the grains move through Chicago or any Cook county point. And this is the occasion of the complaint. While filed in order to secure reparation on 14 carloads of oats shipped through Chicago to the southeast by the particular complainant, the real purpose of the complaint is to secure an equalization of rates not only on oats, but on all grains moving through Chicago, from the extensive territory

of which Omaha is representative, and thence over the Louisville and Cincinnati crossings to southeastern destinations, and thus remove the discrimination against Chicago which is specified in the tariffs. The lines from Omaha through Chicago for some years maintained rates to the upper Ohio River crossings that were prohibitive in view of the materially lower rates to those crossings through St. Louis, Peoria, and the Mississippi River gateways. Shortly, however, before the complaint was filed the carriers from Omaha to Chicago and from Chicago to the Ohio River joined in publishing a proportional rate of 12 cents on grain moving from the Omaha territory through Chicago to the upper Ohio River crossings and destined to points in the southeast. This rate, which is still in effect, would make the upper crossings available gateways on grain moving to the southeast through Chicago, were it not for the fact heretofore explained that the carriers south of Louisville and Cincinnati decline to shrink their local rates on Omaha grain moving through Chicago, although they do shrink it on Omaha grain delivered to them by the same connecting carriers at the same junction, if it has not been permitted, by such connections to move through Chicago. The defendants that established and maintain this prohibition against the grains moving via Chicago have no lines north of Cincinnati. They apply the shrinkage rates upon grains that move from Omaha to Cincinnati via lines and routes in which they have no interest and do not participate, stipulating only that the movement shall not be via Chicago.

From this brief statement of the facts we come back to the inquiry stated in the opening paragraph of this report, namely, whether on the same traffic between the same points of origin and destination a carrier may demand on shipments coming to it from connecting lines a rate that is higher than it demands for its haul between the same points over the same rails on shipments coming to it from the same connecting lines, because such connecting lines have in the one instance hauled the shipments via a particular junction point on their own lines, the rate to the point at which it receives the shipments being the same via the several routes and junction points. It is contended by the complainants that such a course on the part of the defendants is not only an undue discrimination against them as shippers, but is a discrimination against Chicago as a market and against the rail lines running through Chicago to the upper crossings. We concur in that view. The traffic, the points of origin and destination, and the rate to Cincinnati and Louisville being the same, we can not agree that the defendant lines south of Louisville and Cincinnati may close the route of their connections through Chicago by demanding on grain reaching the upper crossings through that point a higher rate for the same service than they demand on the same grains reaching the upper crossings through other junctions. Such a rate adjustment is an

undue discrimination not only against Chicago shippers and Chicago, but against the carriers north of the river that participate in the haul through Chicago. It follows that the present adjustment is unlawful, and we find that any charge by the defendants for their service south of Louisville and Cincinnati on Omaha grain reaching those crossings through Chicago that is in excess of the charges exacted for their service south of the same crossings to like points of destination on Omaha grain reaching those crossings through other junctions is unduly discriminatory and it will be so ordered.

The question of whether or not a carrier may maintain proportional or separately established rates for the same haul varying with different points of origin or of destination of the traffic is not in this case. Nor is this a question of the measure of the through rates or charges. The sole question here is the lawfulness of the effort of defendants south of Cincinnati and Louisville to force their connections which have equalized the rates to Cincinnati via their several lines, routes, and junctions to refrain from hauling the traffic via a particular junction point which is not reached or served by the lines of those defendants. This case is not analogous to any former case in which proportional or separately established rates applicable to the through business have been passed upon by the Commission. It may be that the lines from Omaha to Cincinnati via Chicago would be justified in maintaining a higher rate than is maintained via St. Louis or some other gateway, but they have elected not to do so. It may be that in prescribing joint through rates from Omaha to Atlanta via Cincinnati or Louisville a higher rate via Chicago than via some other junction would be justified or necessary, but if called upon to fix the divisions of such joint through rates upon what theory could the Commission find that the division of the lines south of Cincinnati or Louisville should be higher under the rate via Chicago than under the lower rate via the shorter route when their haul is the same in either instance? If the rate were higher via Chicago, manifestly the excess would belong to the lines north of Cincinnati or Louisville because of their longer haul.

It is said that the Southern Railway, and the Louisville & Nashville, in conjunction with its close ally, the Louisville, Henderson & St. Louis, can and do participate in the earnings north of the river if the traffic moves via St. Louis or Evansville. This arrangement, however, considers the Cincinnati, New Orleans & Texas Pacific Railway as a part of the Southern Railway. So considered the Southern Railway can and does haul the grain from St. Louis to Louisville and thence via Lexington to Cincinnati and back over the same rails from Cincinnati through Lexington to the south under the shrinkage rate from Cincinnati. The Louisville & Nashville hauls the grain from St. Louis to Evansville or Henderson where it crosses the Ohio

River, and for that service receives its proportional or division of 2 cents. The direct, short, and natural route to the southeast from there is over the Louisville & Nashville via Nashville, the distance from Evansville to Nashville being 158 miles, and if the grain were so hauled to Atlanta the Louisville & Nashville would receive all of the full rate south of the Ohio River—24 cents. It elects, however, to turn the grain over at the river to its allied line, the Louisville, Henderson & St. Louis, which hauls it to Louisville, a distance of about 144 miles, and at that point the grain is 25 miles farther from Nashville than it was when it left Henderson. It is then hauled by the Louisville & Nashville to Cincinnati, 110 miles directly away from its destination in the southeast, and moves to the southeast under the shrinkage rate of 22 cents. The earnings between St. Louis and Louisville or Cincinnati are 4 cents, and these lines therefore perform all of this extra service, these out-of-line and back hauls, for exactly the same earnings that the Louisville & Nashville would receive if it moved the traffic over its direct line via Evansville. There are no transportation reasons for this extra service.

Upon being advised of the details of the shipments in question a further order will be entered awarding reparation in accordance with the prayer of the petition.

HARLAN, Commissioner, dissenting:

Connecting carriers moving traffic from a point on one line to a point on another ordinarily fix their charges for the service in the form of a joint through rate concurred in by all the lines in the route of the through movement, agreeing among themselves upon the proportion or division that each line shall have out of the through charge so established. But not infrequently a line forming a part of such a through route prefers, for one reason or another, separately to publish the charge that it will demand for its part of the through service. This charge may be its regular local rate. It is more usual, however, because of the through nature of the traffic, to fix its compensation at an amount less than the local rate; on the other hand, it occasionally happens that the charge may be even greater than the rate that the particular carrier would demand on a local movement on its line between the same points; and in either event, the tariffs must specifically provide that the rate so exacted by the particular carrier for its service shall be applicable to through movements. When so published such a charge is commonly referred to as a proportional rate, and such rates, it may be added, are not only sanctioned by long usage but by the express authority of the act itself. The provision is to be found in section 6, where such rates are referred to as "separately established" rates applicable to through movements.

But the usage of carriers in that regard and the sanction lent to it by the act are based on the theory that a proportional or separately established rate, which, as stated, is applicable only to through traffic, does not and can not stand by itself but is an inseparable factor in the through charge for the through service. It is for this reason that a particular carrier in a through route may fix and collect one proportional or separately established rate when the traffic comes from one point of origin and a substantially different compensation for a like service between the same points on its rails in a through movement of like traffic from another point of origin. Notable examples of such rate constructions are to be found in effect in different parts of the country, and such adjustments of rates are in entire harmony with the general understanding that a proportional or separately established rate is simply a factor in the through charge for the through service and when under examination must be so considered.

As long ago as *Brady v. P. R. R. Co.*, 2 I. C. C. Rep., 131, 139, the Commission held that "through carriage implies a through rate." In the proceeding entitled, "*In the Matter of Through Routes and Through Rates*," 12 I. C. C. Rep., 163, 166, we said, referring to the thought expressed in the earlier case—

This is equally true whether the through rate be published as a whole by the joint action of the connecting carriers, or, in the absence of a joint arrangement, be published in portions by the several carriers.

We also said (p. 166) that the sum of the separately established rates applicable to through transportation is—

a single rate for a single service, and a contract for through transportation is a contract for transportation at the through rate, whether jointly or separately established. In force at the time the shipment is billed.

In language no less forcible it is said, in *Kansas City Transportation Bureau v. A., T. & S. F. Ry. Co.*, 16 I. C. C. Rep., 195, 201, that—

A proportional rate means a part of or a remainder of the through rate or it means nothing at all, and in a case of this kind there must be an examination and consideration of the entire rate from point of production to ultimate destination.

Further reflection since the reports in those proceedings were announced has confirmed me in the belief that the views there expressed are essentially sound. If so, it follows that a movement of grain, under the rates described of record, from Omaha to Chicago and thence through the upper Ohio River crossings to Atlanta, must be regarded as a through movement over a through route at "a single rate for a single service." The movement, the route, the service, and the charge are equally units. In disposing of the complaint, however, my colleagues hold that it is of no concern to the carriers south of the upper Ohio River crossings how the grain from Omaha reaches those crossings, and that they can not lawfully exact more

for their haul south of the river, when the grain reaches their lines through Chicago, than they exact at the same time on grain from Omaha reaching their lines through St. Louis, because, as is urged, in either case the haul south of the river to destination is the same. That view, however, takes into consideration only a part of the service and only a part of the rate for the service. It lays to one side the fact that the movement from Omaha through Chicago to Atlanta is a through service, as is likewise a movement from Omaha through St. Louis to Atlanta. It separates the haul to the Ohio River from the haul south of the river as if they were two separate acts of carriage. It wholly disconnects the rate north of the river from the rate south of the river and deals with each as a unit, although together, as we have said in the cases cited, they make "a single rate for a single service." What the Chicago grain dealer gets under the rates as published is the through transportation of his grain from Omaha to Atlanta, with certain privileges in transit at Chicago, and what he ought to pay is a through charge commensurate with the through service. The majority, however, give no consideration to the through charge or the through service, but deal only with that part of the through charge that is exacted for that part of the through service performed by the carriers south of the river. It is agreed of record that, generally speaking, the route from Omaha through Chicago to points of destination in the southeastern territory is substantially longer than the route to such destinations through St. Louis and longer than the route through Memphis. If, therefore, we were dealing here with joint through rates and distance was the controlling element in the case, we should be compelled to give to the grain moving through St. Louis the benefit of the shorter haul. But by dealing with the movement south of the Ohio River as a separate act of carriage instead of being a part of a through movement from Omaha, and by dealing with the separately established rate south of the river as a thing apart from and having no relation to the through charge, the order of the Commission equalizes the longer route through Chicago with the generally shorter routes through St. Louis and Memphis.

That conclusion is reached not on a finding that the through charge is unreasonable and is made so because of the amount of the proportional rate applicable to the through movement south of the upper crossings, but as a rule of law governing the use of proportional rates. As the Chicago carriers have equalized the rate from Omaha through Chicago to the Ohio River with the proportional rate over the shorter route through St. Louis to the Ohio River, the Commission holds as matter of law, regardless of the substantial reasons that underly attitude of the carriers south of the upper crossings, that the latter must receive the grain at those points and carry it to southern

destinations at no higher charge for the balance of the through service when it comes through Chicago than when it comes through St. Louis. It is held, in other words, that the rate south of the upper crossings must be an open rate without regard to the fact that it is simply the balance of the through charge on a through movement. There is nothing, however, in the language of section 6 that seems to me either to require or to justify such a view of proportional or separately established rates. The utmost, in my judgment, that should be said of such rates is that ordinarily they ought not to be limited to traffic reaching the proportional rate point over a given route to the exclusion of other routes, unless there are substantial reasons for such a limitation. This view preserves a very desirable elasticity in the use of such rates, and will enable the carriers to adjust such rates to competitive and transportation conditions as freely as they are able to adjust their joint through rates to such conditions.

If the movement of grain from Omaha through Chicago to the southeast proceeded under a joint through rate of 36 cents and we were asked upon complaint to equalize that rate with the through charge of 34 cents over the route through St. Louis, we would find it difficult on this record to do so. Certainly the mere fact that the carriers south of the upper crossings received a division of 24 cents out of the joint rate through Chicago while content at the same time to accept a division of 22 cents on grain moving through St. Louis would not be accepted as a sufficient ground for such an order. We would consider the two routes with a view to ascertaining why the through charges over one should be higher than the through charges over the other. We would not inquire with particularity into the divisions of the joint rates as between the carriers north and south of the river. But in this proceeding the Commission rests its conclusions on the fact that the carriers south of the river demand more for their part of the through service when the grain comes to them through Chicago than when it reaches them through St. Louis. In my judgment there is no basis upon which this conclusion may properly rest, and there is nothing in the language of section 6 of the act that requires us to enter such an order as a mere matter of law. That section did not create a new form of rate for the use of interstate carriers nor did it put a limitation upon the use of an old form of rate. It simply described as "separately established rates" what railroad men had long called proportional rates, and required the carriers, in the absence of joint through rates, to publish them as applicable to through movements. Their publication gives them a legal status as a factor in the through charge, and is notice to the shipper of the basis upon which their through charges are to be made up. I see nothing in its language, however, that remotely indicates a purpose to give this Commission authority in such a case as this

to deal with a part of the rate and a part of the service as if both were wholly unrelated to the entire rate and the entire service. The difference between an unpublished division of a joint through rate and a separately established rate applicable only to through movements is one largely of form and not of real substance. We do not endeavor ordinarily to control unpublished divisions arrived at by agreement among the carriers in the through route, but deal only with the joint through rate itself; on the other hand, we may find that a through charge made up of proportional rates is excessive and that the excess in the through charge is lodged in the proportional rate exacted by one of the carriers in the through route, and may enter an order accordingly. But I do not understand that we have heretofore dealt with a proportional or separately established rate apart from a consideration of the through charge of which it is simply a factor.

There are substantial reasons, in my judgment, why the defendants are justified in refusing to shrink their 24-cent rate south of the upper crossings when the grain comes through Chicago, although they shrink it to 22 cents on grain coming through St. Louis. It clearly appears that the route through Memphis controls the rates on Omaha grain to southeastern destinations, and that the carriers into and out of Cairo and Evansville were able to share in the traffic only by equalizing the charges through those crossings with the charges through Memphis. The grain ordinarily reaches these lower Ohio River crossings through St. Louis and they are the natural outlet from St. Louis to the southeast. But there are also grain markets at the upper crossings and carriers that serve them to southeastern destinations. It is clear, and this is demonstrated of record, that those markets and those carriers can get no part of the Omaha grain passing through St. Louis except upon a rate parity with the lower crossings. The rate adjustment that was made south of the upper crossings was necessary in order that they might share with the lower crossings in the movement of Omaha grain through the St. Louis gateway. These facts seem to me to be abundantly established on the record and to present in its simplest form a case of the compelling force of competitive conditions. The influence of competition upon the attitude of the carriers south of the upper crossings is also emphasized by the fact that the Louisville & Nashville, in connection with the Louisville, Henderson & St. Louis, with which it has close associations, makes earnings on Omaha grain north of the river when it comes through St. Louis, but can not add to its revenues when it reaches the upper crossings through Chicago. The Southern Railway also makes earnings north of the river when the grain comes through St. Louis, but gets nothing beyond its haul south of the river when the grain

reaches the upper crossings through Chicago. We are now told, however, that inasmuch as the carriers have so adjusted their proportional rates south of the upper crossings as to put those markets on a parity with the markets at the lower crossings with respect to Omaha grain coming through St. Louis, they must, as a matter of law, so adjust their rates south of the upper crossings as to give to Chicago grain dealers the same service south of the river at the same rate. In so holding, it seems to me, the Commission has altogether overlooked the fact that the upper crossings do not have to compete with the lower crossings on Omaha grain coming through Chicago as is the case with respect to Omaha grain coming through St. Louis. The grain dealers of Chicago do not attempt to forward their Omaha grain to the southeast through the lower crossings, but only through the upper crossings. I am unable therefore to see any reason why Omaha grain passing through Chicago to southeastern points of consumption should enjoy any through charge less than a reasonable charge for the through service, and the reasonableness of the through charge over that route is not here questioned. The fact that all the grain from Omaha passing through St. Louis will necessarily cross the river at Cairo or Evansville unless the carriers south of the upper crossings offer it the inducement of a parity in rates over the latter routes is at once not only the explanation but a sufficient justification for the shrinkage that they make for their part of the through movement from Omaha through St. Louis to the southeast.

It is the amount of the through charge that ordinarily determines whether traffic between two points shall move over one route rather than another and not the fact that a part of the through charge for a part of the through service may be less over one route than over the other. It would seem proper, therefore, to inquire, not whether a part of the charge for a part of the service is higher in one case than in the other, but whether there is any reason why the through charge for the entire service over one route should be higher than the through charge for the entire service over the other route. No consideration, however, has been given in this case to the through charge over either route. The majority report is based wholly on a technical and, as I think, a mistaken view of the functions of a proportional rate. It treats a proportional rate, upon a complaint by a shipper, as if it were a matter that may properly be considered by itself and without regard to the through charge of which it is a part. This view, as I understand the situation, makes some anomalous results possible in this case. An order requiring the defendant lines to charge no more for their service south of the upper crossings, when the grain comes from Omaha through Chicago than when it comes through St. Louis, would be fully met, with respect both to its terms and the principle

upon which such an order must necessarily be based, by the substitution, in place of the proportional rates upon which the traffic now moves from Omaha through St. Louis and the upper crossings to Atlanta, of a joint through rate equal to the sum of the present intermediate rates. The spirit as well as the letter of such an order would also be fully complied with by the substitution, for the present proportional rates of 4 cents from St. Louis to the upper crossings and 22 cents beyond to Atlanta, of a joint proportional rate of 26 cents from St. Louis through the upper crossings to Atlanta. I understand, in fact, that such a proportional rate is now in effect from St. Louis through Louisville to the southeast, at least as to some lines, and that grain moves under it. Nor would there be anything in contempt of the order or hostile to its spirit or to the principle underlying it if the carriers north of the river for any reason should now raise or withdraw the 12-cent proportional rate that they have made effective on Omaha grain through Chicago to the upper crossings. Yet either of these courses on the part of the carriers participating in the traffic would leave the order without effect, our labors herein unavailing, and the Chicago grain dealers with the same through charges that they now pay. These suggestions of what might be done without disobeying our order are illustrative of the embarrassments that must necessarily follow whenever this Commission attempts to deal with a proportional or separately established rate apart from and without regard to the through charge of which it is but a factor. I do not assert that such a rate may not under some circumstances be the subject of an order by the Commission, but I do contend that ordinarily a shipper may demand an order affecting such a rate only after we have considered the through charge for the through service and upon a finding that the through charge is unreasonable or discriminatory and that the fault lies in a particular proportional rate as one of its factors.

For these reasons I am compelled to withhold my assent to the findings and the order of the Commission in this proceeding.

CLEMENTS, *Chairman*, also dissenting:

While agreeing to the dissenting views of Commissioner Harlan for the most part, though not altogether, I must state that I am unable to agree with the majority of the Commission in this case for the reason that, when the record is stripped of the confusion incident to the contentions of the parties and the manner in which the same are presented, the alleged discrimination in the rate adjustment complained of will be found, as I view it, to stand in merit and principle the same in substance as many other adjustments which have not been condemned.

The lines north of the Ohio River do not make rates from Omaha through Chicago to any Ohio River crossings which, added to the 24-cent local therefrom to Atlanta, would make a total through charge as low as the 34-cent rate applicable through Memphis, and through St. Louis and the lower crossings. Therefore the southern lines here involved do not have to shrink their full local rates to smaller proportionals to meet the rates applying through Chicago by the lower Ohio River crossings from Omaha to the southeast.

The southern lines leading from the upper crossings, however, have no other way of competing in rates with the lines through Memphis or St. Louis and the lower crossings in order to secure a share of the business through the upper crossings, except by the plan of proportionals which they have adopted to equalize through the upper crossings the through rates applying via Memphis and the lower crossings, or to reduce their locals from the upper crossings to the present basis of proportionals therefrom. They merely have met, therefore, a competitive situation as it exists and which has been created by other lines through Memphis on the one hand, and St. Louis and the lower crossings on the other, and they have gone no further than was necessary to meet this competition. In other words, the defendant lines leading south from the upper crossings are charging for the same service performed by them only so much less on part of the traffic which comes to them there than on other parts of it as is necessary under stress of competition to secure part of the business that way, all of which otherwise would go by the lower crossings by reason of the lower rates made that way by action of the lines north of the river. The complaint is that they have not extended the use of proportionals made to meet this competitive situation beyond the play of the competition which they seek to meet.

22 I. C. C. Rep.

No. 3553.

C. N. DIETZ LUMBER COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted March 25, 1911. Decided December 5, 1911.

Tariffs of defendants limit reconsignment privilege under through rate to first 48 hours after arrival of car at destination; *Held*, That this is not an unreasonable limitation. Complaint dismissed.

Charles S. Elgutter for complainant.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation dealing in lumber at Omaha, Nebr. In its petition, filed September 26, 1910, it alleges that it was compelled to pay an unreasonable rate for the transportation of a carload of lumber weighing 45,500 pounds from Dearborn, Tex., to Upland, Nebr., because of an unreasonable provision in the tariffs of the defendants limiting the reconsignment privilege under the through rate to the first 48 hours after the arrival of a car at its destination. Reparation is asked. The claim was first filed with the Commission November 5, 1908.

The car was shipped on August 17, 1907, by the McShane Lumber Company, via the Atchison, Topeka & Santa Fe, consigned to the C. N. Dietz Lumber Company, Arkansas City, Kans., where it arrived on August 27, 1907. On August 29 the freight auditor of the Atchison, Topeka & Santa Fe telegraphed the consignee at Omaha, asking for instructions as to disposition of the shipment. At that time the telegraph operators were on strike and the complainant was unable to telegraph instructions until September 4, when the auditor was instructed to divert the car to E. G. Dey & Company, Upland, Nebr.

At the time of the movement the joint rate on lumber from Dearborn to Upland was 34 cents per 100 pounds. At that rate the charges on the shipment would have been \$154.70. A tariff governing the traffic in question provided:

When change is made while car is in transit, reconsigning charge will be \$5 per car.

When change is made after car has reached first destination, reconsigning charge will be:

If request is made within 24 hours after arrival at first destination, \$6 per car.

If request is made after 24 hours and within 48 hours, \$7 per car.

A change of destination shall not be made if request is not made within 48 hours after car has reached first destination.

More than 48 hours having expired after the arrival of the car at Arkansas City before orders for further movement were received, the carriers were compelled under the tariffs to charge the combination of intermediate rates, which were: Dearborn to Arkansas City, 27½ cents per 100 pounds; Arkansas City to Kansas City, 20 cents; and Kansas City to Upland, 17 cents. This would have resulted in charges of \$293.48, but the charge between Arkansas City and Kansas City was computed on the basis of 22½ cents and the aggregate amount collected was \$304.48. The resulting overcharge of \$11 will be returned without an order of the Commission.

The complainant asks reparation for the difference between the amount which would have been collected under the joint rate and the amount actually collected. In Conference Rulings Bulletin No. 5, rule 53, the Commission said:

A consignor of sheep, which were being grazed in transit, was unable because of a severe snowstorm to get the sheep to the station before the grazing privilege expired according to the published time limit. Upon inquiry of the carrier it was held that it can not lawfully take the sheep forward on the rates which would have been applicable under the tariff had the sheep been shipped within the time limit.

This means that carriers can not lawfully depart from the terms of their tariffs to meet the emergencies that arise in the affairs of their patrons. The reconsignment privilege, whereby application of the joint through rate is secured, is not one to be demanded by the public as a matter of right, but it is a concession voluntarily extended by the carriers, and its application must be uniform. We do not find that the limitation of the reconsignment privilege under the through rate to the first 48 hours after the arrival of a car at destination is unreasonable; in fact, we recognize the need of such a limitation to prevent the use of cars for storage purposes, one of the abuses incident to an allowance of the reconsignment privilege.

Upon receipt of proof that the overcharge hereinbefore referred to has been returned, the complaint will be dismissed.

No. 3602.

CARSTENS PACKING COMPANY

v.

OREGON & WASHINGTON RAILROAD COMPANY ET AL.

Submitted April 26, 1911. Decided December 5, 1911.

Complaint assails the relationship between the rates on live stock and the rates on the finished product thereof in carloads from Portland, Oreg., to Tacoma and Seattle, Wash. Upon the facts of record; Held, That the relationship between the rates involved is not shown to be unreasonable. Complaint dismissed.

J. E. Belcher and Ellis, Fletcher & Evans for complainant.

H. E. Spencer for Oregon & Washington Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation, with principal places of business at Tacoma and Seattle, Wash., and is engaged in the shipping of live stock, fresh meats, and other packing-house products. Its complaint, filed October 24, 1910, assails as unjust and unreasonable the relationship between the carload rates on live stock and the finished products thereof from Portland, Oreg., to Tacoma and Seattle. Reparation is asked.

It was stipulated at the hearing that the petition be amended by substituting for the defendant Oregon & Washington Railroad Company the Oregon-Washington Railroad & Navigation Company, and the defense of the case was conducted by that company. It appears that all three of the defendants operate from Portland to Tacoma over rails owned by the Northern Pacific Railway Company, the other two defendants operating under contracts with said Northern Pacific Railway Company.

Complainant purchases a great many cattle, hogs, and sheep on the Portland market and ships them to Tacoma for slaughter. The history of the general rate situation herein involved is stated in the

complainant's brief, as follows: When complainant commenced business in Tacoma, in 1903, there was in effect a rate on fresh meats in carloads from Portland to Tacoma of 30 cents per 100 pounds, and the live-stock rate was \$40.60 per 36-foot 6-inch car. At that time the rate on fresh meats from Tacoma to Portland was 23 cents per 100 pounds, while the smoked meat and provision rate in either direction was 20 cents. In 1907 the live-stock rate was reduced to \$35 per 36-foot 6-inch car, and the rate from Tacoma to Portland on fresh meats was raised from 23 cents to 30 cents per 100 pounds. In the early part of 1910 the rate on fresh meats from Portland to Tacoma and Seattle was reduced from 30 cents to 25 cents; in September, 1910, it was further reduced to 20 cents, with a minimum of 25,000 pounds, the provision rate being reduced to 15 cents, with minimum weight of 30,000 pounds.

These reductions were voluntarily made on the part of defendants, but there was no reduction made at the time in the live-stock rate, and witness for complainant testified that as a result of this readjustment in the relationship of the several rates there has been a falling off in complainant's business at Seattle of 11 per cent at the date of the hearing in this case.

Considerable effort has been made to check the rate history above outlined with the tariffs on file with the Commission, and it appears that the rates stated are substantially correct, and were in effect at one time or another during that period. In view of the manner in which the tariffs were published, it would require a lengthy statement to set forth comprehensively the various rates and dates of changes therein. It will not be necessary, however, to state more than has already been presented.

It is averred in general terms that the adjustment herein complained of was made to satisfy special interests, namely, the Union Meat Company, of Portland, Oreg., and that if it is allowed to stand the policy thus inaugurated will be continued and further readjustments will be made which will play into the hands of the "beef trust" and will eventually "clean up" the small packers in the western country one at a time, as it is asserted has been so successfully consummated in the east. It is alleged that the traffic officials of the Oregon-Washington Railroad & Navigation Company, who are responsible for this adjustment of rates, have simply been the victims of the beef trust, as they have naturally been anxious to secure for their allied lines the transcontinental business of the large packers of the east. These general averments are apparently deductions from complainant's grievance against the present adjustment, and it does not appear what justification may exist therefor, as they are not accompanied by specific evidence as to the facts.

It may be restated that there is no issue in this case as to the intrinsic reasonableness of the rates. As is said on behalf of complainants:

We do not claim that \$35 rate on live stock is too high in and of itself, but in its relation to the rate on finished product in the same direction it is entirely out of reason, and, as a matter of fact, under the conditions Tacoma or Seattle can not ship fresh meats to Portland.

The contention of complaint is that the rate of \$35 per car should be reduced to \$25 per 36-foot 6-inch car. It appears that live stock is cheaper in Portland than in Tacoma, it being stated by one witness that this difference in value relates to the difference in the cost of transportation from Portland to Tacoma.

Formerly the rate on the product from Tacoma to Portland was 23 cents, while the rate in the opposite direction was 30 cents and it was under such an arrangement that the complainant's business was built up. It appears from the record, however, that the 30-cent rate from Portland to Tacoma was prohibitory, and one of the reasons given by defendants for reducing it was in order that the traffic might move.

Testimony was offered to show the relationship between the gross weight of the live steer, sheep, or hog and the net weight of dressed products, it being asserted that from 100 pounds of live weight complainant gets in dressed meat, from cattle, 57 to 58 pounds; from sheep, 45 to 48 pounds; and from hogs, 75 to 80 pounds; and that in order for complainant to secure as much fresh meat from the live animal at its establishment at Tacoma as the shipper at Portland would ship in one car of that commodity to Tacoma or Seattle, it would be necessary for complainant to ship two cars of live stock; that two cars of live stock would cost complainant \$35 each, or \$70, while the shipper of dressed meats from Portland to Tacoma or Seattle for the same quantity would have to pay only \$50. This, it is asserted, measures the amount of the disadvantage under which the complainant is laboring. Comparisons were made of the difference between the relationship complained of and the relationship between rates on live stock and on the dressed products in other territories, but it is averred on behalf of defendants that the adjustment between Portland and Tacoma and Seattle is one which was made by the defendants largely upon commercial conditions peculiar to that territory, in meeting which the defendants were clearly within their legal rights.

Exhibits were introduced to show the distance the Portland packers can ship in carloads in comparison with the distances that are reached upon rates of the same amount from Tacoma and Seattle. These exhibits, however, would seem to be more appropriate in support of an issue as to the reasonableness of the rates in and of them-

selves and are not very illuminating when considering solely the issue of the reasonableness of a particular relationship between the rates on a commodity in different stages of manufacture.

The defendants assert that so long as the rates northbound and southbound between Tacoma and Seattle and Portland are kept on a parity there can be no discrimination against either of those cities. They further state that when the live-stock rate from Portland to Tacoma was \$40.60 per car and the fresh-meat rate amounted to \$60 per car there was no complaint as to the relation of the rates, but when the charges were changed to \$35 for live stock and \$50 for fresh meats complainants became dissatisfied. They call attention to the fact that the difference per car in the former instance is 32.8 per cent, while in the latter it is 30 per cent, and that the net difference in the rate adjustment amounts to 2.3 per cent.

The principal witness of defendant stated that one of the controlling reasons for the present adjustment was that the Portland people in urging the change had referred to the adjustment between Chicago and the Missouri River, also Chicago and St. Paul, and asked for lower rates on fresh meats and packing-house products. They thought that the rate on the products should be as low as or lower than the rates on live stock. This witness testified that he was surprised to find that the rates were lower on fresh meats and packing-house products than on live stock in the eastern territory referred to, but that when he came to consider the claims that are made for loss and damage on live stock he realized that as a risk proposition the fresh meat was a better commodity to handle. He had in mind also the expedited service required for live stock and the return transportation for parties in charge of the live stock. He finally concluded that there was not any good reason why the rates should not be approximately the same and he felt that the adjustment would have to be made, and that if it were not made voluntarily, the carrier would be compelled to make it. This witness stated that the carrier first published a rate on fresh meats of 25 cents, Portland to Tacoma, in the hope of getting some business. The traffic did not move, however, and a rate of 20 cents, which was insisted upon, was established, though the minimum was raised to 25,000 pounds. It was further testified that the consuming territory tributary to Tacoma and Seattle is larger than that in the neighborhood of Portland, and, further, that Portland is compelled to pay more than Seattle and Tacoma for the transportation of cattle from points on the Northern Pacific and the Great Northern.

One of the arguments advanced on behalf of complainant in support of the allegation that the present adjustment is unreasonable is that it is impossible to bring cattle from Portland, slaughter them

at Tacoma or Seattle, and then reship to Portland, as it would cost complainant \$70 to bring the required amount of live stock to Tacoma, and \$80 to bring the required amount of live stock to Seattle to make one carload of dressed meats, and that it would cost \$50 per car to get the same to Portland again, making the total in the case of Tacoma \$120, and in the case of Seattle \$130. Complainant concludes—

From this it would appear that it would pay complainant to move to Portland or at least slaughter there, but it must be remembered that complainant has an investment at Tacoma and Seattle on which it could not realize anything if such a move were made.

From the whole record in this case the conclusion is inevitable that complainant is seeking to have the Commission equalize Tacoma and Seattle with Portland as a slaughtering center. Doubtless due to her natural location Portland has certain advantages as a live-stock market, and the testimony is that the prevailing prices of live stock are somewhat lower there than at the cities on the Sound. The record does not show that this condition is due to any unjust arrangement of rates, and it is well settled that it is not the function of the Commission to equalize communities in matters of this character.

With regard to the relationship which rates on live stock should bear to those on fresh meats and products, the Commission has held that in fixing rates on competitive articles the relation should be determined on the basis of the difference in the cost of service in the transportation of such articles, and that many of the other considerations entering into the establishment of rates upon independent or isolated articles should be in large part eliminated. The testimony in this case is that the cost of transportation in the case of live stock and the products of live stock is approximately the same, and this is not at variance with our general knowledge of the situation. Based on the same minimum carload weight for both movements of 25,000 pounds, at the per-car rate on live stock, \$35 per 36-foot 6-inch car, the rate would be 14 cents per 100 pounds for the movement to Tacoma and 16 cents to Seattle. When these rates are compared with the rate on fresh meats from Portland to Tacoma and Seattle of 20 cents per 100 pounds, it will be seen that at the present time the rates on live stock are lower than the rates on fresh meats. Upon the record it is our conclusion that the adjustment complained of has not been shown to be unreasonable, and the complaint will therefore be dismissed.

No. 3029.

GEORGE M. SPIEGLE & COMPANY ET AL

v.

SOUTHERN RAILWAY COMPANY.

Submitted May 18, 1911. Decided December 6, 1911.

Award of reparation ordered upon additional findings made herein.

Mortimer C. Rhone for complainants.

Claudian B. Northrop for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

LANE, *Commissioner*:

On the hearing of this case counsel for the parties agreed that if the Commission should find that the complainants were entitled to reparation they would enter into a stipulation covering the amount due under such finding. In our opinion of November 7, 1910, 19 I. C. C. Rep., 522, we held that the complainants were entitled to reparation and said that the amount of reparation to be awarded would be the subject of further action of the Commission. This was done to enable the parties to agree on the amount of the award. They have been unable to agree, and it has become necessary for us to make a specific finding on that subject.

The complainants asked for reparation in the sum of \$3,582.62 on 450 cars which moved into Newport, Tenn., between February 23, 1906, and November 28, 1910, upon which charges were paid for the milling-in-transit privilege. The Commission held that reparation should be made on the basis of the rates applicable at Johnson City. The latter city had no transit privilege on lumber originating in North Carolina, consequently in our computations all North Carolina shipments have been dismissed from consideration. The milling-in-transit rate at both Newport and Johnson City had for some time been 2 cents per 100 pounds, with prescribed carload minima, and remained the same as to both points until March 27, 1908, when the minimum charge was raised at Newport from \$5 to \$6 per car. On

22 I. C. C. Rep.

April 3, succeeding, the same increase was made effective at Johnson City. However, no shipments moved into Newport in the interim that were affected by the rule. The tariff which brought about a change in the relative status of the two points became effective January 15, 1909, when Johnson City was given a flat rate of \$2 per car, while the Newport rate remained unchanged. On May 16, 1910, the rate at Johnson City was made 1 cent per 100 pounds, and remained at that figure for the remainder of the period covered by the claim in this case. The number of inbound cars at Newport from January 15, 1909, on which reparation is awarded is 128. On those which moved into Newport between January 15, 1909, and May 16, 1910, we find the amount of recovery by deducting \$2, the rate at Johnson City, from the transit charge collected from complainant, the balance being the amount of the reparation awarded. On shipments moving in subsequent to the latter date, May 16, 1910, to November 28, 1910, the amount of reparation is ascertained by dividing the transit charge by two.

We find, therefore, that complainants are entitled to reparation in the sum of \$720.40, with interest from December 31, 1910.

An order will be issued accordingly.

22 I. C. C. Rep.

No. 3379.
ELK CEMENT & LIME COMPANY ET AL
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL

Submitted November 9, 1911. Decided December 12, 1911.

Rates on cement in carloads when shipped from the Lehigh Valley district in eastern Pennsylvania and western New Jersey to Detroit, Mich., and other central freight association points, found to be unduly discriminatory against shippers from the Michigan district, and defendants are required to remove such discrimination.

Hal. H. Smith for complainants.

Edward Barton for Baltimore & Ohio Railroad Company; Baltimore & Ohio Southwestern Railroad Company; and Cincinnati, Hamilton & Dayton Railway Company.

O. E. Butterfield for New York Central Lines.

G. W. Kretzinger for Grand Trunk Western Railway Company.

N. S. Brown, C. H. Stinson, and H. H. Watts for Wabash Railroad Company.

Bills, Streeter & Parker for Pere Marquette Railroad Company.

REPORT OF THE COMMISSION. .

McCHORD, Commissioner:

The complainants are corporations organized under the laws of the state of Michigan and are engaged in the manufacture and sale of cement. The mills of complainants are located at various points averaging about 150 miles distant from Detroit, Mich. These points may be described as located around Detroit in a half circle.

It is alleged in the complaint, in substance, that freight rates on carload shipments of cement from manufacturing plants located in eastern Pennsylvania and western New Jersey, known as the Lehigh Valley district, are so low when compared with rates from the plants of complainants to consuming points in central freight association territory that they constitute undue and unreasonable preference and

advantage to shippers from the Lehigh Valley district. In the prayer of the complaint the Commission is requested to require the carriers making and participating in the rates to cease and desist from such discrimination. The Commission is also asked to establish commodity rates from the plants of complainants to all points in central freight association territory which shall bear a proper and just relation to commodity rates now in effect to the same points from the mills located in the Lehigh Valley district.

We may dismiss without further consideration or discussion the question of the establishment by order of the Commission of commodity rates from complainants' mills to all points in central freight association territory, for the reason that there is not sufficient testimony in the record to warrant a finding of such a sweeping character. There are many mills located at various and widely scattered points in the territory in question in practically all directions from mills of the complainants. Therefore the establishment of commodity rates that will be reasonable and just to shippers and carriers and shall be so adjusted as not unduly to discriminate between competing points is a task the Commission could not properly undertake except upon the fullest inquiry at which all interests were represented with ample opportunity to be heard. This leaves for consideration the question whether the adjustment of rates between the Lehigh Valley district mills and competitive points in central freight association territory is discriminatory as compared with rates from complainants' mills to the same points.

The first cement mills of any importance in this country were erected in the Lehigh Valley district. Prior to the time cement was produced in large quantities in this region practically all of this commodity was imported from Europe. It is asserted by complainants, and not disputed, that very low rates of freight were made from seaboard points to induce the movement of the imported product to the consuming markets throughout the country, particularly to points in central freight association territory. After cement production was well established in the Lehigh Valley district, the low rates were continued and have been maintained with some variations but on substantially the same basis to the present time.

About the year 1897 cement began to be manufactured in large quantities from rock deposits around Detroit as well as from deposits of marl found near the shores of Lake Superior. It is asserted there is now invested in the industry near Detroit about \$15,000,000, and 14 mills have an annual capacity of about 5,000,000 barrels, with an output of about 3,500,000 barrels. In the Lehigh Valley district there are 16 mills, and the Government reports show their capacity to be

about 30,000,000 barrels yearly, with an output of about 20,000,000 barrels.

During the period from 1898 to 1907 the price of cement at the mills varied from \$1.65 to \$2 per barrel, and from 1907 to the present time the price has varied from 80 to 90 cents. So far as appears from the evidence, the cost of production in the Lehigh Valley district is about the same as at the mills of complainants. The cement is substantially of the same character whether produced in the Lehigh Valley district or in the Michigan district, and it is all used for the same purpose and finds sale in the same markets.

Complainants assert that they have operated under a freight-rate handicap ever since they began the manufacture of cement, but that it was not felt to any disastrous extent so long as cement at the mills sold for \$1.25 per barrel or more, and prior to a general advance in freight rates from and to points in central freight association territory which took place in the year 1907. Complainants further assert that the comparatively low freight rates accorded the Lehigh Valley district producers enable them to invade the Detroit and other central freight association consuming markets and sell cement therein at prices which are below a reasonable profit to Michigan producers, and that the Lehigh Valley district mills have entered into an agreement whereby cement is sold throughout trunk line territory at prices sufficiently high to enable them to sell in central freight association territory at an actual loss, thus making prices in the latter territory which are ruinous. The testimony seems to substantiate the statements respecting the practice of the Lehigh Valley district producers, but whether these statements be true or not, the commercial condition thus presented is one which the Commission is not empowered to remedy under the law. In so far only as any undue discrimination in the freight-rate adjustment may have aided to bring about the condition complained of has the Commission any regulating authority.

Turning now to the rate situation, we find that rates from the Lehigh Valley district mills to Detroit are 11.25 cents per 100 pounds; from Detroit to the Lehigh Valley mills the rates to some of the Lehigh Valley district points are 13½ and to others 15½ cents. The rate from the Lehigh Valley district mills to Chicago is 15 cents, and from Chicago to New York 20 cents. Detroit being a 78-per-cent rate point, the rate from the latter point to New York is 15½ cents, and the rate from New York to Chicago is 20 cents.

In 1907 the central freight association carriers checked in an advance of rates from and to points in that territory which were approximately 73¼ per cent of the sixth class mileage scale. This check was not made applicable to complainants' mills, however, for

the reason that the check, so far as it applied to shipments to Detroit, was enjoined by a federal court. Rates at the present time from complainants' mills to Detroit are lower than generally prevail in that territory. An advance of about 1 cent per 100 pounds was filed with the Commission, but was suspended under the provisions of the fifteenth section of the act, and is disposed of in the case entitled *In the Matter of the Investigation and Suspension of Advances in Rates by Carriers for the Transportation of Cement Originating in Central Freight Association Territory*, 22 I. C. C. Rep., 90.

An examination of rates from the Lehigh Valley district to central freight association territory points shows that they average about 62 per cent of the sixth class rate. While it is true that the sixth class mileage scale used in central freight association territory is not used in making rates from trunk line points to that territory or in trunk line territory, there is no material difference between the regular sixth class rate between New York and Chicago scaled down to intermediate points and the rates resulting from an application of the mileage scale. For example, the mileage scale carries rates for a distance of 450 miles only. If, however, it is extended to 600 miles pro rata, it will bring the sixth class rate for that distance to 18 cents, and 73½ per cent of 18 cents is 13.19 cents. Detroit is 600 miles from Coplay, the Lehigh Valley district basing point. If the Detroit rate be figured on the basis of the trunk line New York-to-Chicago rate the result is substantially the same. Detroit would then get 78 per cent of 73½ per cent of 23 cents, Coplay to Chicago sixth class rate, or a rate of 13.15 cents.

The following table gives sample rates from one of the Michigan mills to points in central freight association territory, which may be compared with rates from Coplay, Pa., to the same point in another table set out below :

Rates from Newago, Mich., 188 miles from Detroit.

To—	Rate per 100 pounds.	Distance.	Rate per ton per mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>
Toledo, Ohio	6½	216	6.5
Findlay, Ohio	8½	260	6.5
Springfield, Ohio	9½	347	5.4
Van Wert, Ohio	8	211	7.6
Dayton, Ohio	9½	325	5.8
South Bend, Ind	6	165	7.2
Elkhart, Ind	6	166	7.2
Fort Wayne, Ind	7	178	7.8
Logansport, Ind	8	236	6.7
Indianapolis, Ind	9	309	5.8
Chicago, Ill	6	213	5.6
Kankakee, Ill	6	263	4.5
Danville, Ill	9½	319	5.9
Decatur, Ill	10	396	5.0
Springfield, Ill	11½	434	5.3

Rates from Copley, Pa.

To—	Rate per 100 pounds.	Distance.	Rate per ton per mile.
	Cents.	Miles.	Mills.
Toledo, Ohio	11.25	650	3.4
Findlay, Ohio	11.60	694	3.3
Springfield, Ohio	12.10	720	3.3
Van Wert, Ohio	12.45	710	3.4
Dayton, Ohio	12.80	744	3.3
South Bend, Ind	14.30	791	3.5
Elkhart, Ind	14.30	793	3.5
Fort Wayne, Ind	13.30	725	3.6
Logansport, Ind	14.50	825	3.5
Indianapolis, Ind	13.80	821	3.3
Chicago, Ill	15.00	861	3.4
Kankakee, Ill	15.00	891	3.3
Danville, Ill	15.00	891	3.3
Decatur, Ill	16.7	975	3.4
Springfield, Ill	17.9	1,013	3.5

It is a rule too well settled to need discussion that as distance increases the rate per ton per mile decreases, and merely because a greater distance point has a lower rate per ton per mile than a shorter distance point, discrimination does not necessarily result. It is equally well settled, however, that rates must not only be reasonable in and of themselves, but they must also be relatively reasonable. The duty imposed by law is to give equal treatment to all shippers, and this includes the right to reach competitive markets on relatively equal terms. Carriers are not required by law, and could not in justice be required, to equalize natural disadvantages, such as location, cost of production and the like, but they may not in any manner whatsoever unduly prefer one set of shippers entitled to equal treatment over another, or one locality over another.

The defendants to this proceeding are parties to joint through rates from Lehigh Valley district mills to Detroit and other points in central freight association territory. We find that the rates they make to those points are on a lower basis than those they make from Detroit and other points to competitive points, distance considered. At the hearing the defendants presented no evidence with respect of the reasonableness of the adjustment. It was their contention in brief and on argument that no discrimination could be predicated on rates from the mills of complainant to Detroit and other points in central freight association territory, because in every instance there is a higher aggregate charge from the Lehigh Valley district. With this contention we can not agree. If the contention of the defendants is the law, then followed to its logical conclusion carriers would have the right to completely nullify distance and give shippers far removed from consuming markets absolute control of prices in such markets as against shippers located near thereto. Indeed, it is charged by the complain-

ants in this case that when Lehigh Valley district shippers have supplied the eastern markets they "dump" their surplus in Detroit and other central freight association points at less than cost of manufacture and make prices so low that the business is no longer profitable. It appears to be the practice of all cement producers to "dump" their surplus product in certain large competitive consuming markets, but the complainants assert that when they undertake to rid themselves of their surplus they are confined in their markets and are compelled to ship under rates of freight which are much higher than those enjoyed by their competitors. From the figures given herein it is clearly apparent that the Michigan cement manufacturer can not ship to the east for any great distance, nor can he do so to most points in central freight association territory except he meets the competition from the Lehigh Valley district shippers. In so far as the carriers which make joint through rates to Detroit and other consuming points also make rates from the Lehigh Valley district mills to competitive central freight association points, they unduly discriminate against the Michigan producers and relatively they are at a disadvantage. *Indiana Steel & Wire Company v. C., R. I. & P. Ry. Co.*, 16 I. C. C. Rep., 155; *Railroad Commission of Tennessee v. A. A. R. R. Co.*, 17 I. C. C. Rep., 418.

Considering all the facts and circumstances, we are of opinion that there is discrimination against the mills of the complainants for which the defendants in this case are responsible and which they may be properly required to remedy. It would appear that the discrimination against complainants is represented by the difference between the rates charged them and the Lehigh Valley district shippers for relative distances, but from this record it is impossible to determine whether that discrimination extends to all competitive points in central freight association territory or whether there ought to be a change of rates to the same extent to all such points. Under these circumstances we will not make an order at this time, but will expect defendants to check in rates to and from points in central freight association territory which shall not discriminate against mills of the complainants. If this is not done on or before February 1, 1912, an appropriate order will be issued, and the case is held open for that purpose.

22 I. C. C. Rep.

INVESTIGATION AND SUSPENSION DOCKET No. 87.**IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF CEMENT ORIGINATING IN CENTRAL FREIGHT ASSOCIATION TERRITORY.**

Submitted October 16, 1911. Decided December 12, 1911.

Under the circumstances disclosed by the record, it appears that the carriers in this case have sustained the burden of proof which the statute casts upon them in regard to advances in the interstate cement rates complained of. The tariffs carrying such advanced rates should be allowed to go into effect on the date to which they have been suspended by an order of this Commission.

Edward Burton for Baltimore & Ohio Railroad Company; Baltimore & Ohio Southwestern Railroad Company; and Cincinnati, Hamilton & Dayton Railway Company.

O. E. Butterfield for New York Central Lines.

G. W. Kretzinger for Grand Trunk Western Railway Company.

N. S. Brown, C. H. Stinson, and H. H. Watts for Wabash Railroad Company.

Bills, Streeter & Parker for Pere Marquette Railroad Company.

Hal. H. Smith for certain interested cement shippers.

REPORT OF THE COMMISSION.**McCHORD, Commissioner:**

Under the provisions of section 15 of the act, the Commission suspended the following tariffs until December 29, 1911: Wabash Railroad Company Supplement No. 7 to I. C. C. No. 1906; Grand Trunk Railway System Supplement No. 16 to I. C. C. No. A-1192; Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Cincinnati Northern Railway Company Supplements Nos. 13 and 14 to I. C. C. No. 5170; Lake Shore & Michigan Southern Railway Company Supplement No. 8 to I. C. C. No. A-2543; Michigan Central Railroad Company Supplement No. 8 to I. C. C. No. 3539.

The suspended tariffs carried advances in rates on cement in carloads from Michigan, Indiana, Ohio, and other points to Detroit, Mich., Toledo, and Sandusky, Ohio, of from one-half cent to one and

a half cents per 100 pounds over existing rates. There were advances named in these tariffs from certain distant points, such as St. Louis, Mo., but so far as appears no cement ever moves from these distant points and the advance therefrom is not material to this inquiry.

At the hearing it developed that the rates really in controversy were those from cement mills in the Michigan district to Detroit. Mills in this district are located around the city of Detroit at an average distance of about 150 miles. By far the larger number of the rates advanced apply only intrastate, over which the statute gives this Commission no jurisdiction. The interstate rates, about which testimony was offered, are those from Stroh, Ind., Toledo, Sandusky, and Baybridge, Ohio, to Detroit. The rate from Stroh was considered the key to the adjustment throughout the territory. Stroh is a point situated on the Wabash Railroad, about 131 miles from Detroit. It appears that in the year 1907 carriers in central freight association territory posted rates from and to all points in that territory on cement which approximate $73\frac{1}{2}$ per cent of the sixth class mileage scale. Certain producers of cement in and around Detroit secured an injunction from a federal court restraining the application of the $73\frac{1}{2}$ per cent adjustment from their mills to Detroit, which injunction applied to the points near Detroit involved in this proceeding. After the injunction was dissolved the advances now under suspension were filed by the carriers.

In the case of *Elk Cement & Lime Co. v. B. & O. R. R. Co.*, 22 I. C. C. Rep., 84, we have found that Michigan shippers of cement are discriminated against in rates from the Lehigh Valley district, which is situated in the western part of New Jersey and the eastern part of Pennsylvania, and have suggested to carriers naming and participating in the rates that the discrimination be removed. The only question presented in this case, however, is the reasonableness of the advance proposed in the suspended tariffs, and to that question we will direct our attention. Taking Stroh as the key to the rate situation and calling, for convenience, the existing rate the 4-cent basis, 4 cents per 100 pounds being the rate now in effect from Stroh to Detroit, we find the history of the rates to be as follows:

June 20, 1900, to July 7, 1907, 4-cent basis; July 7, 1907, to April 11, 1910, 5-cent basis; April 11, 1910, to February 29, 1911, 4-cent basis.

It is asserted by the carriers that the 4-cent basis was put into effect in 1900 to encourage the industry in and around Detroit and that the 5-cent basis now sought to be restored was decreased in 1910 because of competitive reasons. That is to say, the Wabash Railroad put in a 4-cent rate from Stroh at the behest of a producer at that point and to meet that rate the 4-cent basis was made applicable to

establish reasonable rates for the future and to award reparation in the sum of \$93.20.

In making rates to the south and southeast, Ohio River crossings such as Cincinnati, Louisville, Evansville, Cairo, Thebes, etc., and Virginia cities such as Richmond, Lynchburg, Roanoke, etc., are used as basing points upon which combination rates are built.

The contentions of complainant may be summarized as follows:

First, that geographically, and from the standpoint of water competition, Toledo is more advantageously situated than either Chicago or Milwaukee, and the carriers have recognized its location by according to it on traffic to the east 78 per cent of the Chicago-New York class rates.

Second, that from the standpoint of distance, Toledo is entitled to better rates to Ohio River crossings and to Virginia cities.

Third, that inasmuch as Chicago and Toledo for many years were both under official classification ratings and Toledo had to Cincinnati 85 per cent of the Chicago-Cincinnati rates, and to Virginia cities 78 per cent of the Chicago-Virginia cities rates, and those relations still exist as to the straight class rates, Toledo should have proportional rates to Cincinnati, 85 per cent of the proportional rates from Chicago to Cincinnati, the same rates as Chicago to Jeffersonville, New Albany, and Evansville, slightly higher rates than Chicago to Joppa, Thebes, Brookport, and Cairo, and 78 per cent of the Chicago proportional rates to Virginia cities. In addition, the Commission is asked to order the inclusion of parts of farm wagons and carts under the ratings applicable to those commodities in carloads.

The defendants are the Lake Shore & Michigan Southern; Cleveland, Cincinnati, Chicago & St. Louis; Louisville & Nashville; Toledo, St. Louis & Western; Chesapeake & Ohio; Southern; Chicago, Indiana & Southern; Mobile & Ohio; Illinois Central; New Orleans, Mobile & Chicago; and New York Central Railroads.

None of the defendants is an originating line from Milwaukee. Two of them, the Lake Shore and the Cleveland, Cincinnati, Chicago & St. Louis, originate traffic at both Toledo and Chicago. The Toledo, St. Louis & Western is also initial from Toledo. The Chicago, Indiana & Southern and the Illinois Central reach Chicago.

Briefly, complainant's difficulties arise from differences between the official and southern classifications, and the fact that no proportional rates on this traffic are in effect from Toledo.

Toledo is located upon Lake Erie and is reached by 14 or more railroads. All rates stated herein are in cents per 100 pounds.

Official classification ratings formerly applied from both Chicago and Toledo. There were no proportional rates in effect from either

point to Ohio River crossings or to Virginia cities, and to Cincinnati, Toledo was accorded 85 per cent of the Chicago-Cincinnati rates and to Virginia cities 78 per cent of the Chicago-Virginia cities rates. In 1897, southern classification ratings were applied from Chicago to Ohio River crossings and to Virginia cities, upon these commodities, but a corresponding change was not made from Toledo. Subsequently, the class rates on this traffic from Chicago to Ohio River crossings and to Virginia cities were reduced by the establishment of proportional rates governed by southern classification. Those proportional rates to Ohio River crossings were applicable on shipments to points south of the states of Kentucky and Virginia and east of the Illinois Central Railroad, Cairo to Jackson, and of the Mobile & Ohio Railroad, Jackson to Mobile. Those to Virginia cities were applicable on traffic destined to certain named points in the states of Georgia, North Carolina, South Carolina, and Virginia.

After considerable effort on part of complainant, proportional rates on farm wagons and carts, carloads and less than carloads, were established from Toledo to Cincinnati, applicable on shipments destined south of Kentucky, etc., those rates being, on carloads 12 cents and on less than carloads 17 cents. In 1905 Toledo was given the Chicago basis to Ohio River crossings on farm wagons and carts except that the proportional rates from Chicago to Ohio River crossings were applicable on shipments to points within the state of Mississippi, but that state was excluded from the Toledo rates. That is, if the final destination of a carload shipment from Toledo was a point south of the states of Kentucky and Virginia and east of the Illinois Central Railroad, Cairo to Jackson, and of the Mobile & Ohio Railroad, Jackson to Mobile, the proportional rate to Cairo was 10 cents, but if the shipment was destined to a point in Mississippi the class rate of 19½ cents to Cairo applied.

In 1906 Toledo was given the Chicago proportional rate to Virginia cities on farm wagons in carloads.

The following are the distances in miles from the points named to the named representative Ohio River crossings and Virginia cities:

To—	From—		
	Milwaukee.	Chicago.	Toledo.
	Miles.	Miles.	Miles.
Cincinnati.....	370	286	202
Evansville.....	372	287	379
Jeffersonville.....	387	302	324
Cairo.....	448	363	514
Lynchburg.....	840	755	551
Roanoke.....	825	740	571

The following statement shows class rates, governed by official classification, to Ohio River crossings proper:

	Class.					
	1	2	3	4	5	6
Milwaukee to Cincinnati.....	Cents. 45	Cents. 38	Cents. 28	Cents. 20	Cents. 17	Cents. 14
Chicago to Cincinnati, Evansville, and New Albany.....	40	34	26	17	15	12
Toledo to Cincinnati.....	34	28½	22½	15	13½	10
Toledo to Jeffersonville and New Albany.....	43	36½	27½	19	16	13
Toledo to Evansville.....	45	38	30	21	18	14
Toledo to Jopps, Thebes, Brookport, and Cairo.....	50½	44½	33	25	20½	15½

Proportional class rates, governed by southern classification, from the points named to Ohio River crossings, applicable on shipments to the south or southeast, are:

	Class.					
	1	2	3	4	5	6
Milwaukee, Davenport, and Moline.....	Cents. 41	Cents. 35	Cents. 28	Cents. 18	Cents. 15	Cents. 12
Chicago, Peoria, and South Bend.....	35	30	22	15	12	10
Indianapolis.....	28	19½	17½	11	9½	7

No proportional rates are in effect from Toledo to Ohio River crossings.

The following statement shows class rates, governed by official classification, from the points named to Virginia cities proper:

	Per-centage group.	Class.					
		1	2	3	4	5	6
Chicago and Milwaukee.....	100	Cents. 77	Cents. 62	Cents. 47	Cents. 32	Cents. 27	Cents. 22
Peoria.....	110	79½	64½	52	35½	30	24½
Davenport.....	122	89½	75½	58	39½	33½	27½
Indianapolis.....	93	66½	57½	43½	29½	25	20
Toledo.....	78	55½	47½	36	24½	20½	16½

Proportional class rates, governed by southern classification, from same points to Virginia cities, applicable on shipments to the south and southeast, are:

	Per-centage group.	Class.					
		1	2	3	4	5	6
Chicago and Milwaukee.....	100	Cents. 77	Cents. 62	Cents. 47	Cents. 32	Cents. 27	Cents. 22
Peoria.....	110	79½	64½	52	35½	30	24½
Davenport.....	122	89½	75½	58	39½	33½	27½
Indianapolis.....	93	66½	57½	43½	29½	25	20
Toledo.....	78	55½	47½	36	24½	20½	16½

Chicago
Milwaukee
Indianapolis

No proportional rates are in effect from Toledo to Virginia cities.

The following statement shows a comparison of rates from Toledo and other points to Ohio River crossings on the vehicles named when destined to the southeast:

FREIGHT VEHICLES WITH TOPS, L. C. L.

From—	To—			
	Cincin-nati.	Jeffer-son-ville and New Albany.	Evans-ville.	Joppa, Thebes, Brook-port, and Cairo.
	Cents.	Cents.	Cents.	Cents.
Toledo.....	102	129	135	151½
Chicago, Peoria, and South Bend.....	52½	52½	52½	52½
Milwaukee, Davenport, and Moline.....	61½	61½	61½	61½
Indianapolis.....	33	33	33	33

FREIGHT VEHICLES WITHOUT TOPS, L. C. L.

Toledo.....	51	64½	67½	75½
Chicago, Peoria, and South Bend.....	35	35	35	35
Milwaukee, Davenport, and Moline.....	41	41	41	41
Indianapolis.....	22	22	22	22

FARM WAGONS AND CARTS, L. C. L.

Toledo.....	34	43	45	50½
Chicago, Peoria, and South Bend.....	15	15	15	15
Milwaukee, Davenport, and Moline.....	18	18	18	18
Indianapolis.....	11	11	11	11

FARM WAGONS AND CARTS, C. L.

Toledo.....	12½	16	18	19½
Chicago, Peoria, and South Bend.....	10	10	10	10
Milwaukee, Davenport, and Moline.....	12	12	12	12
Indianapolis.....	7	7	7	7

The following shows a comparison of rates to Virginia cities applicable on shipments to the south and southeast, from points having proportionals governed by southern classification, and class rates from Toledo governed by official classification:

	Less than carloads.			Carloads.
	Freight vehicles with tops.	Freight vehicles without tops.	Farm wagons and carts.	Farm wagons and carts.
	Cents.	Cents.	Cents.	Cents.
Racine, Milwaukee, and Davenport.....	109½	73	33	22
Chicago and Peoria.....	100½	67	30	20
Indianapolis.....	81	54	26	17
Toledo.....	166½	83½	55½	20½

The proportional class rates governed by southern classification have been in effect from Chicago for some 14 years, and since their establishment complainant has constantly agitated the question of granting to Toledo the same relative adjustment. Complainant has severe competition from Chicago and other points in that territory and on sales destined beyond the Ohio River crossings or the Virginia cities has found it necessary to make a price that would equalize the Chicago rates, and where this has not been done it has been unable to secure a second order. It is testified that on shipments to Mississippi such equalization has sometimes amounted to more than the profit on the shipment.

With the exception that has been noted Toledo was formerly accorded the same proportional rates as Chicago to the Ohio River crossings on farm wagons and carts, to wit, 10 cents and 15 cents, respectively, for carloads and less than carloads. On May 1 and June 15, 1911, the proportional class rates from Toledo were withdrawn, and since then class rates governed by official classification have applied, which result in rates from Toledo as follows:

To—	Car-loads.	Less than car-loads.
	Cents.	Cents.
Cincinnati.....	12½	34
Jeffersonville and New Albany.....	14	43
Evansville.....	18	45
Joppa, Thebes, Brookport, and Cairo.....	19½	50½

Prior to May 1, 1911, the carload rate on farm wagons from Toledo to Virginia cities was a proportional rate of 20 cents, but the withdrawal of that proportional rate resulted in the application of the official classification fifth class rate of 20½ cents.

The only explanation offered of the cancellation of these proportional rates is contained in a letter from an official of the New York Central lines, in which it is stated that roads in central freight association territory were considering the question of freight rates and divisions to southern nonprorating points and expected a proposition from the southern roads, and notwithstanding the desire of the central freight association roads to establish an equitable basis from Toledo, it was—

felt necessary to get away from some of the arrangements in effect to-day, which, if in force at the time the proposition is received from the southern roads, would prejudice the position of the roads operating north of the Ohio River.

The alleged violations of the fourth section of the act arise from three causes: The proportional rates in effect from Chicago; differ-

ences in the southern and official classifications; and territorial limitations.

Traffic from Chicago to certain Ohio River crossings and to Virginia cities may, under tariff provisions, be routed through Toledo. The southern classification ratings and the proportional rates from Chicago result in lower rates from Chicago than from Toledo. This feature will be left for determination under the applications now pending for relief from the provisions of the fourth section of the act.

None of the defendants, other than the Lake Shore, the Cleveland, Cincinnati, Chicago & St. Louis, the Chicago, Indiana & Southern, and the New York Central were represented at the hearing. Only one witness on part of defendants was presented. This witness suggested that the direct lines, such as the Illinois Central from Chicago to southern territory, originated the rates from Chicago and "set the pace" for the other carriers, and, having direct lines penetrating southern territory, brought about the application of southern classification ratings from Chicago. It is asserted that while the rates from Toledo are higher than from Chicago, they simply show a difference and do not result in discrimination, as the lines at Toledo are not responsible for the rates established by the lines from Chicago. Broadly speaking, no other defense is offered for the conditions complained of, but it is said, and complainant admits, that uniform classification would remedy the situation.

For 14 years complainant has had correspondence and conversations with interested traffic officials in reference to the inclusion of the state of Mississippi under the rates on farm wagons and carts. For many years the whole situation has also been the subject of correspondence and conversations. The general consensus of opinion among the representatives of the carriers from Toledo appears to have been, and to be, that Toledo was and is entitled to relief, but the relief has not been afforded, apparently because of questions of divisions in the possible establishment of joint rates, and the probability that if Toledo were given due recognition other localities in central freight association territory would have to be accorded similar treatment. In other words, it may be said that apparently the carriers recognize injustice and discrimination in Toledo's situation and desire to grant relief. They, however, wish that relief to be brought about by negotiations with other carriers and to await the establishment of joint rates and probable unification of the classifications.

Much of the correspondence referred to is in the record in this case and it contains many tacit admissions by defendants that the rate adjustment complained of is unjust and unreasonable, and many

promises of assistance in securing relief therefrom. The correspondence also shows that every failure to secure relief at the hands of a meeting of representatives of defendants and other carriers has been explained as based upon grounds which, though stated in various ways, were in principle and substance very similar to the explanation of the reasons for canceling the proportional rates from Toledo, hereinbefore quoted from letter from one of defendants' traffic officials. It also appears from this correspondence that defendants feared complaints from other points in central freight association territory if Toledo were placed and kept on an equality with Chicago, Milwaukee, etc. Defendants serving Toledo have admitted the necessity for a change, but have refrained from making it because of influences from other localities, objections from other carriers, etc. And now the situation is made much worse by the increases in the rates on farm wagons and carts, which, together with the only ascribed reason therefor and defense thereof, have already been noted.

The adjustment is plainly and aggravatedly unjustly discriminatory. Should justice be denied this complainant because to grant it justice will necessitate a change elsewhere? Must equality be withheld because according it is or will be objected to by other carriers or shippers? May this complainant be excluded from selling in Mississippi because some other carrier has a through line to Mississippi from another and competing point of production? Must this complainant wait indefinitely for reasonable rates which are withheld because of inability of carriers to agree upon how they will divide the earnings? Can the defense offered here for the advances in rates be considered as sustaining the burden of proof which the statute places upon the defendants? We think not.

Notwithstanding the fact that Chicago is one of the greatest railroad centers in the world and has a greater number of direct lines to Ohio River crossings than has Toledo, rates from Toledo, in many instances twice as high as from Chicago, can not be justified on mere tariff construction and publication, the more or less remote possibility of the establishment of joint rates, or the hope of future uniform classification.

Assuming that the rates from Chicago to a considerable part of the south and southeast are made and largely controlled by the direct line of the Illinois Central, these defendants have elected to meet via their lines and the various Ohio River and Virginia cities gateways the rates so made from Chicago and to accord somewhat similarly favorable rate adjustments to other points east of Chicago. May they do that and continue to disregard the manifest undue discrimination so caused against this complainant? May they select certain

points of production on their lines and give to them the benefit of rates that permit meeting the competition of producers located upon other lines, and deny similar treatment to other producing points upon their lines that are similarly situated and as to which the same and long-established general basis of rates applies? Obviously not.

The fact that reduction of an unreasonable rate or the correction of an unjust discrimination will require reductions or corrections at other points can not be accepted as a valid defense of an unreasonable rate or an unjust discrimination. In the instant case the rates which have been assailed must be condemned. In our view they have been shown to be unreasonable, and to subject Toledo and the traffic to unjust discrimination and undue prejudice as compared with Chicago, and with other points, such as Milwaukee and Racine, Wis. The advanced rates have not been shown to be reasonable or nondiscriminatory.

We are dealing with certain class rates applicable to specific kinds of a particular commodity. Whether or not those rates are reasonable for the transportation of other commodities from Toledo or for the transportation of the same commodity from other points in central freight association territory can not be decided in this proceeding. *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.*, 16 I. C. C. Rep., 56. We do not think that either the shorter distances or the percentage bases are inevitably just criteria by which to determine what rates will be reasonably applicable from Toledo. The Commission found in *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.*, *supra*, that proportional rates from more distant points must be less per mile to permit such points to compete in a common market. In its petition, after stating what it believed Toledo to be entitled to, complainant said:

Still in order that the rates be uniform we would agree to waive our geographical rights on shipments destined to points in southern territory and instead would accept the same basis of rates as applied from Chicago to points south of the states of Kentucky and the Virginias whether proportional rates on the Ohio River or through rates from point of origin to points of destination.

Upon the whole record we are of opinion that rates from Toledo in excess of those contemporaneously maintained by defendants from Chicago to Cincinnati, Jeffersonville, and New Albany, applicable on shipments of spring freight vehicles and of farm wagons and carts, destined to the south or southeast, subject complainant, Toledo and such traffic, to unjust and undue discrimination, and that defendants should establish and maintain rates from Toledo upon such traffic no higher than they contemporaneously maintain from Chicago to Cincinnati, Jeffersonville, and New Albany, respectively. We are of opinion and find that the following rates from Toledo upon such

shipments to Cincinnati are, and for the future will be, just and reasonable maximum rates:

	Cents.
Spring freight vehicles, with tops, l. c. l.....	52½
Spring freight vehicles, without tops, l. c. l.....	85
Farm wagons and carts, l. c. l.....	15
Farm wagons and carts, c. l.....	10

We are of opinion and find that rates upon such shipments from Toledo to Joppa, Brookport, Thebes, and Cairo should not for the future exceed the following, which we find to be reasonable rates:

	Cents.
Spring freight vehicles, with tops, l. c. l.....	75
Spring freight vehicles, without tops, l. c. l.....	50½
Farm wagons and carts, l. c. l.....	23
Farm wagons and carts, c. l.....	15½

We are of opinion that rates from Toledo to Virginia cities in excess of those contemporaneously maintained by defendants from Chicago, on shipments destined to the south or the southeast, are unduly discriminatory. Toledo is nearly 200 miles nearer to the Virginia cities than is Chicago. We find that for the future rates not in excess of the following will be reasonable rates from Toledo to the Virginia cities, on shipments destined to the south or southeast:

	Cents.
Spring freight vehicles, with tops, l. c. l.....	90
Spring freight vehicles, without tops, l. c. l.....	55½
Farm wagons and carts, l. c. l.....	25
Farm wagons and carts, c. l.....	17

Complainant contends that the official classification ratings are unjust and unreasonable in comparison with those in the southern and western classifications. A comparison of the ratings in the different classifications is by no means a guide to the relative transportation charges unless the class rates under the several classifications are also considered.

Complainant presents comparisons to show inconsistency in the classification ratings, and alleges that articles, the transportation of which is extremely hazardous, are given lower ratings than are given to articles much less liable to injury; that bulky articles having a low weight per cubic foot are accorded lower ratings than those having a greater weight per cubic foot; that value seems not to have been considered; that high-priced passenger vehicles, worth much more than spring freight vehicles, and not capable of being loaded as heavily, take the same rates in carloads as spring freight vehicles with or without tops, etc.

After complainant had made informal complaint to the Commission, the chairman of the official classification committee visited complainant's works and found its statements in reference to the weight

per cubic foot of its commodities to be correct, and on July 1, 1910, changes were made in the official classification as follows: The classification on spring freight vehicles, without tops, less than carloads, was reduced from three times first class to one and a half times first class; packages not exceeding 44 inches in height were increased from one and a quarter times first class to one and a half times first class, and all restrictions as to length of crates were abolished.

Spring freight vehicles are made both with and without tops. They are shipped with only the gear knocked down. All parts are solidly crated. Those with tops are shipped with the tops up and the rating usually applied is that applicable to "packages exceeding 54 inches in height," three times first class. Those without tops are usually shipped under the heading "packages not exceeding 44 inches in height," one and a half times first class. As to weight and character, spring freight vehicles are between farm wagons and carts, and buggies.

The Lake Shore & Michigan Southern Railway provides exceptions to the official classification on traffic from Toledo to Mississippi River points under which spring freight vehicles in carloads take the fourth class rates with a minimum of 14,000 pounds. As to Mississippi River points Toledo is on an equality with Milwaukee. Complainant contends that the carload rating on spring freight vehicles should be reduced to fourth class and the minimum should be increased from 11,000 to 12,000 pounds, subject to rule 27 of official classification, which provides graded minima for cars over 36 feet in length. Spring freight vehicles can be loaded in a 36-foot car in excess of 12,000 pounds. The western classification provides a minimum thereon of 20,000 pounds, applicable to any length of car. On shipments to Texas and Oklahoma the western classification provides class-A rating, with a minimum of 12,000 pounds. As has been seen spring freight vehicles in carloads are rated in official classification the same as passenger vehicles. Defendants contend that the crates required for the transportation of spring freight vehicles are so nearly the same dimensions as the crates for passenger vehicles that it would be exceedingly difficult, if a separation were made, to frame a classification description which would be understood. The official classification is the only one which provides ratings on spring freight vehicles in accordance with the dimensions of the crates.

With limitations, rule 25 appears to be applicable as an average. Under "Carriages" the official classification shows hook and ladder, hose, children's, mining, dump, hand, platform, pony, spraying carts, etc., at same or less minima and same rate as spring freight-delivery wagons. Possibly a more minute and detailed classification on the basis of differences in weight and in value would either increase the

rates on passenger vehicles or reduce the rates on heavier and less expensive vehicles.

The question of minimum weights on light and bulky articles is a vexed one because of the wide differences in cubical capacities of cars. Much attention has been given to it by carriers and much has been accomplished toward minimizing the difficulties. The minimum weight upon basis of which charges are assessed is nearly if not quite as important as the classification rating of the commodity. Some of these questions are directly before us in other proceedings in which they can be more properly dealt with than upon this record. We can not here conclude that the classification rating on spring freight vehicles in carloads is unreasonable or discriminatory.

The record does not warrant an order requiring the inclusion of parts of farm wagons and carts under the carload ratings applicable thereto.

Complainant asks reparation on five shipments, the details of which are as follows:

July 15, 1909, one open freight delivery wagon without top, k. d., crated in four packages weighing 1,150 pounds, Toledo to Century, Fla., via Lake Shore & Michigan Southern; Cleveland, Cincinnati, Chicago & St. Louis; and Louisville & Nashville roads. Charges, \$25.93; rate, \$2.22. Three times first class to Cincinnati, \$1.02. Apparently there is a straight overcharge of 40 cents on this shipment. On basis of rate of 35 cents to Cincinnati, charges would have been \$17.83. We find that complainant is entitled to reparation from the defendants named in this paragraph in the sum of \$8.10, with interest from July 22, 1909.

January 26, 1911, one spring freight vehicle with standing top, k. d., crated in three packages weighing 1,090 pounds, from Toledo to Charlotte, N. C., via Toledo, St. Louis & Western, Chesapeake & Ohio of Indiana, Chesapeake & Ohio, and Southern roads. Charges, \$27.29; rate, \$2.52. Apparently there was an undercharge of 18 cents on this shipment. On basis of rate of 52½ cents to Cincinnati, charges would have been \$22.07. We find that complainant is entitled to reparation from the defendants named in this paragraph in the sum of \$5.22, with interest from February 27, 1911.

February 22, 1911, one carload farm wagons weighing 27,000 pounds, Toledo to Macon, Miss., via Lake Shore & Michigan Southern; Chicago, Indianapolis & Louisville; Cleveland, Cincinnati, Chicago & St. Louis; and Mobile & Ohio roads. Charges, \$147.15; rate, 54½; fifth class to Cairo, 19½ cents. On basis of rate of 15½ cents to Cairo, charges would have been \$136.35. We find that complainant is entitled to reparation from the defendants named in this paragraph in the sum of \$10.80, with interest from February 28, 1911.

March 8, 1911, one carload farm wagons weighing 18,200 pounds, Toledo to Pontotoc, Miss., via Lake Shore & Michigan Southern; Chicago, Indianapolis & Louisville; Cleveland, Cincinnati, Chicago & St. Louis; Illinois Central; and New Orleans, Mobile & Chicago roads. Charges, \$107, at minimum of 20,000 pounds and rate of 53½ cents, 19½ cents to Cairo. On basis of 15½ cents to Cairo, charges would have been \$99. We find that complainant is entitled to reparation from the defendants named in this paragraph in the sum of \$8, with interest from March 18, 1911.

August 17, 1910, one carload spring freight vehicles weighing 18,900 pounds, Toledo to Albany, N. Y., via Lake Shore & Michigan Southern and New York Central roads. Reparation claimed on requested change in classification. As no change has been made in the classification, no reparation can be awarded on this shipment.

An order in accord with these views will be entered.

22 I. C. C. Rep.

No. 3253.

J. P. WADELL SHOW CASE & CABINET COMPANY
v.
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

Submitted December 10, 1910. Decided December 5, 1911.

Complaint asks reparation based upon an interpretation of a rule in the western classification describing "boxing" or "crating" at variance with that applied by defendants; *Held*, That under the rule in question complainant's shipments were properly rated as "in crates" under the western classification, and that this case should be dismissed.

Maurice Dreifuss and Harris, Dodds & Brown for complainant.
O. E. Butterfield and W. H. Beyers for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By petition, filed April 26, 1910, the complainant corporation attacks the interpretation placed by defendants upon a rule of the western classification with respect to the method of packing show cases for shipment. Under this rule show cases when boxed in carloads take first class rates, and when crated the next higher class, which is one and one-half times first class. Reparation is asked.

July 14, 1908, complainant shipped one carload of show cases from Detroit, Mich., to Seattle, Wash., over the lines of defendants. The shipment weighed 15,380 pounds and charges were collected in the sum of \$692.10 at one and one-half times the first class rate, or \$4.50 per 100 pounds. July 29, 1908, complainant shipped another carload of show cases to the same destination over the same lines. This latter shipment weighed 22,200 pounds and charges were collected in the sum of \$990, at a rate of \$4.50 per 100 pounds. Complainant alleges that the show cases were "boxed" as required by the western classification, and that they were entitled to the first class rate of \$3 per 100 pounds between Detroit and Seattle.

The material part of the rule in question is as follows:

Unless otherwise provided for in the classification, all freight shipped in crates, racks, bales, bags, or bundles will take, when shipped in crates or racks, the next class higher (greater) than in boxes.

The terms "boxed," "in boxes," and "in barrels" used in the classification are intended to mean completely inclosed, and will apply only to such packages made of wood, except as provided in paragraph "B" of this rule, and the term "crated" or "in crates" to mean inclosed on all sides, including bottom, with framework, so as to allow of their being taken in and out of a car within the crate, and so as to fully protect the article from damage by contact with other freight. * * *

The testimony is that these show cases were inclosed completely on top and at both ends, and that because the show cases had wooden bottoms these bottoms were not further inclosed, as the carriers themselves so interpreted the rule as to permit the use of such solid wooden bottoms in lieu of extra boarding. The question as to whether the show cases were boxed or crated depends upon the structure of the inclosing sides.

It was shown at the hearing that these sides did not completely inclose the show cases, but that open spaces 2 or 3 inches in width extended the whole length of both sides; and that strengthening cleats ran diagonally across the sides. These openings were provided as handholds for use in loading and unloading the show cases, and the rest of the package gave no indication that their use in connection therewith was for the purpose of economizing lumber.

The complaint as brought attacked the interpretation of the rule, rather than its reasonableness. At the hearing the reasonableness of the rule was the subject of but little testimony. With regard to the interpretation of the rule, it would appear that the application of the higher class rate to these shipments was correctly made, for the show cases were not completely inclosed and therefore, under the rule, were not boxed. It would seem that the charge may properly be made somewhat higher for the transportation of show cases in crates than in boxes. Show cases ordinarily are composed largely of glass, or woods of value, held in place by metal or wooden beading. The risk of damage is greater when shipped in crates than in boxes. The handholds on either side of the box could be made by means of an extra strip as well as by the omission of a portion of the complete closure.

It follows that this case must be dismissed.

22 L. C. C. Rep.

No. 3949.

McLAUGHLIN GORMLEY KING COMPANY

v.

MAINE STEAMSHIP COMPANY ET AL.

Submitted May 25, 1911. Decided December 5, 1911.

Upon the facts disclosed by the record; *Held*, That a sixth class rate of 35 cents per 100 pounds from New York, N. Y., to Minneapolis, Minn., via Portland, Me., on brimstone in barrels is not shown to have been unreasonable.

T. A. McGrath for complainant.

H. C. Martin for Grand Trunk Railway Company and Detroit, Grand Haven & Milwaukee Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of drugs, spices, etc., with its principal place of business at Minneapolis, Minn. By petition, filed March 6, 1911, it alleges that it was charged by defendants an unreasonable rate for the transportation of one carload of brimstone from New York, N. Y., to Minneapolis. Reparation is asked.

During March, 1909, complainant shipped from New York, N. Y., via the line of the Maine Steamship Company to Portland, Me., and thence via the Grand Trunk Railway system and connections to Minneapolis, a carload of brimstone in barrels which had been imported from Sicily. The traffic moved from New York City to Minneapolis as a domestic shipment. The defendant carriers assessed charges on basis of the actual weight of 47,535 pounds at sixth class rate, which, via the route named, was 35 cents per 100 pounds.

When the shipment moved, the defendant lines had in effect a commodity rate of 28 cents per 100 pounds on brimstone, carloads, in mats or in bulk, from Boston, Mass., and Portland, Me., to Minneapolis, and said rate was also published from New York City, but the tariff contained a proviso that brimstone in bulk would not be handled from New York City. This exception as to New York

appears to have been due to the fact that the steamship company, which forms a part of the so-called differential route from New York City, was not prepared to handle brimstone in bulk. The effect of this tariff was that, from New York City, brimstone in carloads, in mats, would have been accepted at the commodity rate of 28 cents, but not brimstone, carloads, in bulk. Since the shipment in question moved the rate of 28 cents from New York has been entirely withdrawn from the tariff, though it still applies from Boston and Portland.

Complainant alleges that brimstone in mats is nothing more than extra heavy jute sacks filled with brimstone. Upon the hearing, however, there was no authoritative evidence as to what mats were. It was nevertheless contended by complainant that shipments of brimstone in barrels could be handled as easily as shipments of brimstone in mats, and therefore that the rate on brimstone in barrels should not exceed 28 cents.

It is also claimed by complainant that shipments of brimstone in barrels should be recognized by the carriers as bulk shipments, and that therefore the rate of 28 cents should be applied from New York City. It is contended, on the other hand, by the carriers, and correctly so, as we believe, that the barrel is a package, and that brimstone in barrels would ordinarily be termed package shipments, as distinguished from loose brimstone in bulk. The testimony shows that under official classification package shipments are generally rated higher than shipments of same commodities loose in bulk.

Upon all the facts of record we are unable to find that the sixth class differential rate of 35 cents per 100 pounds applied to this shipment of brimstone was unreasonable or excessive. The complaint will be dismissed.

No. 3881.

TRAFFIC BUREAU OF THE SIOUX CITY COMMERCIAL
CLUB

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted November 10, 1911. Decided December 12, 1911.

Class rates from Sioux City, Iowa, to stations in southwestern Minnesota found unreasonable and reduced to equal the present rates from St. Paul and Minneapolis to substantially equidistant stations in the same territory.

George T. Bell for complainant.

C. C. Wright and *F. P. Eyman* for Chicago & North Western Railway Company.

James B. Sheean and *H. M. Pearce* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

J. D. Armstrong for Great Northern Railway Company.

W. P. Trickett and *T. A. McGrath* for Minneapolis Traffic Association, interveners.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

This complaint is filed by the traffic bureau of the Sioux City Commercial Club on behalf of its members that are engaged in the wholesale merchandise business at Sioux City, Iowa.

The petition alleges that the defendants charge unreasonable rates for the transportation of merchandise from Sioux City to various points on their lines in southwestern Minnesota, and that by charging unreasonable rates for such transportation the defendants discriminate against Sioux City and subject that distributing center to undue prejudice and disadvantage.

The stations involved are designated in the complaint as follows: On the Chicago & North Western Railway and the Chicago, St. Paul,

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Minneapolis & Omaha Railway: Bigelow to Lake Crystal, inclusive; Heron Lake to Pipestone, inclusive; Bingham Lake to Currie, inclusive; Lake Crystal to Elmore, inclusive; Vesta to Ceylon, inclusive; Madelia to Fairmont, inclusive; and Fox Lake to Blue Earth, inclusive; and on the Great Northern Railway: Manley to Granite Falls, inclusive.

The gist of the complaint is, that the class rates from Sioux City to said stations, and all stations intermediate thereto, in southwestern Minnesota are higher than the class rates from St. Paul and Minneapolis, designated in this record as the twin cities, to stations in the same territory equidistant from the respective distributing centers.

The Minneapolis Traffic Association intervened and resisted the contention of the complainant.

In 1906 the Minnesota railroad and warehouse commission reduced certain class rates within the state of Minnesota under which the defendants had been operating for a considerable period. The effect of this reduction was to increase the disparity between the Sioux City rates and the twin city rates to the stations in question to the disadvantage of the Sioux City jobbers. The carriers acquiesced in this reduction, but subsequently, when the state commission undertook to further reduce charges for transportation, proceedings were instituted in the United States circuit court for the district of Minnesota to test the power of the state commission to make the reductions. It was in substance held that the state commission was without authority in the premises, and the state commission rates, which had been in effect since 1906, were perpetually enjoined, and the rates that were used prior to 1906 were ordered restored, to take effect July 1, 1911. It appears from the record that the great disparity existing between the Sioux City rates and the state-made rates in effect from 1906 to 1911 from the twin cities to this territory gave rise to this complaint, but it is contended that notwithstanding the restoration of the former rates, Sioux City is still greatly prejudiced by the existence of lower rates from the twin cities to the territory in question.

That the class rates from the twin cities to stations in southwestern Minnesota are, with some few exceptions, lower than the class rates from Sioux City to stations in the same territory equidistant from said respective points of origin, was fully conceded by the defendants, and conclusively shown by an examination of the tariffs applicable to the traffic involved. The issue is, therefore, whether the defendants in applying lower class rates from the twin cities to the territory in question subject Sioux City and its shippers to undue prejudice and disadvantage.



It was shown that the greater portion of the traffic involved in this proceeding moved under fourth class rates, and that the inbound rates thereon to Sioux City were materially higher than the corresponding rates on similar traffic to the twin cities.

Complainant maintained that competition among jobbers and distributing centers in selling merchandise of the character involved had reached very acute stages, demanding the elimination of every possible item of cost, and that equality in freight rates was of primary importance to the trade, and that under substantially similar operating conditions such as existed in this case the charges therefor should be equalized by the carriers.

The defendants deny that the rates are unreasonable or that Sioux City is subjected to undue prejudice or disadvantage by reason of the higher rates. They contend that Sioux City has the advantage of the twin cities in other territory; that the transportation from Sioux City northwardly is a back haul for which they are entitled to charge a higher rate; that the tonnage from the twin cities southward is greatly in excess of that northward from Sioux City and therefore should take a lower rate, and that any changes in these rates will necessitate adjustments elsewhere.

The contention on the part of defendants that Sioux City has the advantage in certain designated territory that appears from this record to be naturally tributary to that market can not be held to justify an inequitable rate prejudicial to Sioux City from the territory in question.

With respect to the claim of the defendants that the transportation from Sioux City northward is a back haul, it does not appear from the evidence why there should be a higher charge for such a transportation service; nor was it shown that all the commodities involved move into Sioux City from the north or from the east. In the multitude of articles covered in the class rates, moving from all directions into both Sioux City and the twin cities, the theory of a back-haul movement, in the absence of more specific evidence, would apply equally as well to the twin cities as to Sioux City. Inasmuch as Sioux City and the twin cities are concentrating, reassorting, and distributing centers, the shipments therefrom to the territory in question might fairly be considered as originating at such centers.

The fact that the tonnage out of the twin cities southward is heavier than that of Sioux City northward was strongly argued in justification of a lower rate, but under the facts and circumstances of this case it would not suffice to overcome the firmly established principle of applying equal rates for equal distances under similar operating conditions, no substantial dissimilarity in this respect having been shown.

There is, furthermore, an expensive handling of the freight from the twin cities to this territory which does not seem to obtain at Sioux City to so great an extent.

Upon consideration of all the facts and circumstances disclosed by this investigation, it does not appear that there is any sufficient transportation reason why the class rates from Sioux City to the southwestern Minnesota territory in this proceeding mentioned should be higher than the class rates from the twin cities to such territory, and it is the finding and conclusion of the Commission that the class rates in effect from Sioux City to the stations located upon the lines of the defendants within the territory hereinbefore designated are unreasonable and discriminatory to the extent such rates exceed corresponding class rates applying from Minneapolis and St. Paul to substantially equidistant stations in said territory.

The record does not disclose all the stations located within the territory involved nor the distances from the respective distributing centers to said stations. Under the circumstances we will not make an order at this time, but will expect the defendants to readjust their rates in accordance with the conclusions above stated. If this is not done on or before the 15th day of February, 1912, an appropriate order will be issued, and the case is held open for that purpose.

No. 3831.

ASHLAND FIRE BRICK COMPANY ET AL.

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted November 4, 1911. Decided December 11, 1911.

1. Complaint urges that rates on brick from kilns on or near the Ohio River to Birmingham and other southern cities are unreasonable as compared with the rates on brick from St. Louis, Mo., to the same destinations. While it is true that the Commission has held that where joint or proportional rates are made by all the carriers to certain points of destination it is within its power to end a discrimination as between points of origin by a reduction in their rate from a certain point that is discriminated against, yet this principle only has application where the traffic from both groups of origin is *necessarily* transported to destination by the same connecting carriers and where it is possible for the delivering carriers to put an end to the discrimination by the exercise of their power to refuse to enter into preferential joint or proportional rates. *Indiana Steel & Wire case*, 16 I. C. C. Rep., 155, and *Tennessee Commission case*, 17 Ib., 418, distinguished.
2. Power has not been lodged with this tribunal to equalize economic advantages, to place one market in competition with another, or to treat all railroads as part of one great whole, apportion to each a certain territory, or to require all to meet upon a common basis at all points. As to the charges of undue preference or unjust discrimination made against defendants the Commission can not find that they are guilty in this instance.
3. As to Ironton, Portsmouth, and Oak Hill, Ohio, no order will be entered; but the present rates on brick from Haldeman, Hayward, Ashland, Taylors, and Olive Hill, Ky., to all points of destination involved found to be unreasonable, and reasonable rates prescribed for the future.

Proctor K. Malin for complainants.

R. Walton Moore, F. W. Gwathmey, and A. S. Brandeis for Southern Railway Company and other lines.

Nelson W. Proctor, W. A. Colston, and C. H. Dulaney for Louisville & Nashville Railroad Company.

Edward Barton and Robert S. Alcorn for Baltimore & Ohio Southwestern Railroad Company and Cincinnati, Hamilton & Dayton Railway Company.

W. D. Cochran and Le Wright Browning for Chesapeake & Ohio Railway Company.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

22 I. C. C. Rep.

REPORT OF THE COMMISSION.

LANE, Commissioner:

This proceeding was instituted by certain manufacturers of fire brick at points on or near the Ohio River and involves rates to Birmingham and other cities in the south. The plants of the complainants are located in what is known as the Ashland-Olive Hill district in Kentucky and in the Portsmouth-Oak Hill district in Ohio.

The rates from all points involved herein, except Olive Hill, Hayward, and Haldeman, Ky., are as follows to these typical destinations:

To—	Rate, per 100 pounds.
	<i>Cents.</i>
Birmingham	16
Irondale	16
Atlanta	16
Sheffield	14½
Tusculum	14

From the plants located at Olive Hill, Hayward, and Haldeman, Ky., the rate is one-half cent per 100 pounds less than the rates above set forth.

It is urged that these rates are unjust and unreasonable and that a reasonable rate would be 12 cents from all points excepting Olive Hill, Haldeman, and Hayward, from which the rate should be 11½ cents.

The accompanying map shows the situation.

In supporting their charge that these rates are unreasonable, and more particularly in upholding the allegation that the Ashland-Olive Hill district (which will herein be treated as covering all the kilns) is discriminated against, complainants cite a rate extended by some of the carriers defendant to St. Louis of 14 cents per 100 pounds, out of which switching and bridge charges are absorbed amounting to 3 cents per 100 pounds. The comparative distances, rates, and rate per ton per mile from complainants' plants to Birmingham and from St. Louis to Birmingham, showing both the gross rate from St. Louis and the net rate after deducting switching and bridge charges at St. Louis, are set forth in the following table:

From—	To Birmingham.				
	Distance, miles.	Rate per ton.	Rate per ton per mile.	Net rate after deducting switching and bridge charges at St. Louis.	
				Per ton.	Per ton per mile.
Haldeman, Ky	472	\$3. 10	\$0. 0066	.....	.....
Hayward, Ky	475	3. 10	. 0065	.....	.....
Olive Hill, Ky	483	3. 10	. 0064	.....	.....
Ashland, Ky., via Lexington, Ky.....	523	3. 20	. 0061	.....	.....
Portsmouth, Ohio, via Ashland, Ky.....	554	3. 20	. 0058	.....	.....
Portsmouth, Ohio, via Cincinnati, Ohio	588	3. 20	. 0054	.....	.....
Oak Hill, Ohio, via Ashland, Ky.....	563	3. 20	. 0057	.....	.....
Oak Hill, Ohio, via Cincinnati, Ohio.....	619	3. 20	. 0052	.....	.....
St. Louis:					
Via St. Louis & San Francisco.....	556	2. 80	. 005	\$2. 80	\$0. 005
Via Mobile & Ohio	478	2. 80	. 0058	2. 20	. 0046
Via Illinois Central	485	2. 80	. 0058	2. 20	. 0045
Via Louisville & Nashville.....	530	2. 80	. 0053	2. 20	. 0041

The rates (in cents per 100 pounds) from the Ashland-Olive Hill district, the Ohio River crossings, and St. Louis, Mo., to some of the more important points of destination, are here compared:

To—	From—				
	Ashland district.	Olive Hill district.	Cincinnati, Ohio, Newport, Ky., Lexington, Ky.	Louisville, Ky., Evansville, Ind., Cairo, Ill., Thebes, Ill., Belmont, Mo.	St. Louis, Mo.
	Cents.	Cents.	Cents.	Cents.	Cents.
Birmingham, Ala., and group.....	16	15½	12	11	14
Anniston, Ala., and group	16	15½	12	12	15
Rome, Ga.....	16	15½	12	12	15
Atlanta, Ga.....	16	15½	12	12	15
Florence, Ala., and group.....	14½	14	10½	9½	12½
Chattanooga, Tenn.....	13	12½	9	9	12

It is further shown that the Mobile & Ohio Railroad, extending from St. Louis to Tuscaloosa, Ala., a distance of 502 miles, has

established a rate on fire brick and fire clay from St. Louis to Tuscaloosa of 12 cents per 100 pounds, while from Ashland, Ky., to Chicago, Ill. (430 miles), the rate on fire brick is 8½ cents per 100 pounds. This Commission in the *Metropolitan Paving Brick case*, 17 I. C. C. Rep., 197, fixed 21 cents per 100 pounds as a reasonable rate for a distance of 910 miles between New York and Chicago.

Fire brick is one of the cheapest commodities transported. Cars can be loaded to their absolute capacity and the liability for damage is slight. Shipments are made often in trainloads; the market value of a carload of fire brick (9,000 fire brick; 63,000 pounds) being from \$150 to \$175, the brick selling at an average of \$17 per 1,000.

The history of these rates shows that prior to 1906 the southern carriers had two rates on fire brick from Cincinnati to Birmingham; one on fire brick to be used as furnace material; the other a commercial rate. The carriers equalized these rates by putting in a flat rate on the basis of that previously given to fire brick used as furnace material.

While this complaint goes to the reasonableness of the rates involved it is apparent from the record that it was prompted by the presence of the 14-cent rate from St. Louis to Birmingham. "If," say the complainants, "the St. Louis & San Francisco Railroad, against the protest and opposition of its fellow carriers, can establish and maintain a rate of 14 cents per 100 pounds from St. Louis, with the Mississippi River crossing, are we not justified in saying that a fair and reasonable rate from complainants' district is 12 cents per 100 pounds where 67 per cent of the traffic has no river crossing, is moved a 33-mile shorter haul, and 64 per cent of the traffic is hauled from the nearest plants at Hayward, Olive Hill, and Haldeman, 80 miles nearer to Birmingham than St. Louis by this route? Are we not justified in claiming that if the Mobile & Ohio Railroad Company can haul this traffic to Birmingham for 4.6 mills per ton per mile and out of that pay the river-crossing charge at Cairo, the same commodities should be hauled from all points in complainants' district for 12 cents per 100 pounds where only 33 per cent of the traffic has a river crossing?"

The southern carriers here defendant have no answer to make to these arguments save that the rate from St. Louis to Birmingham is unreasonably low and has been forced upon them by the action of the St. Louis & San Francisco Railroad. It appears that on March 1, 1906, the rate from St. Louis to Birmingham was 16 cents per 100 pounds. Two years later, March 1, 1908, this rate was increased to 17 cents per 100 pounds. Again, in September of that year it was reduced to 16 cents, but on November 1, 1909, the rate was again reduced, this time the reduction being 2 cents per 100 pounds, making a 14-cent rate from St. Louis to Birmingham. Therefore for two

years last past the rate from St. Louis has been 2 cents (or 1½ cents) below that from the complainants' plants to the same points of destination. The southern carriers, at the request of complainants, have made repeated efforts to induce the St. Louis & San Francisco to increase these rates so as to put the St. Louis and the Ashland-Olive Hill districts upon a parity, but the carriers have to admit that these negotiations have been fruitless owing to the determination of the St. Louis & San Francisco to maintain its present rate into Birmingham.

The effect upon the movement of fire brick to southern foundry and furnace points during the periods January to May, 1909, and January to May, 1910, is shown in the following statement:

	Number of cars.					
	From Ashland district.	From Olive Hill district.	From Ashland and Olive Hill districts combined.	From St. Louis district.	Percentage of movement from St. Louis district.	Total movement.
During period from January to May, 1909, inclusive.....	263	228	491	8	<i>Per cent.</i> 1.6	499
During period from January to May, 1910, inclusive.....	158	310	468	49	9.5	517
During both periods...	421	538	959	57	5.6	1,016

From this it would appear that the shipments from the St. Louis district increased from 8 carloads in one period to 49 in the other. While this is slight compared with the large movement from other districts, the increase in percentage is great and threatens, so complainants contend, the permanency of their hold upon this market.

In so far as this case is predicated upon the discrimination of the carriers out of St. Louis the Commission may not within its lawful power reduce the rates from the Ashland-Olive Hill district. That the rates from St. Louis were put in by the St. Louis & San Francisco Railroad in order to secure a greater volume of tonnage into southern furnace markets is uncontradicted. For its own purposes as a competing line, and serving a distinct point of origin which desired access into the markets of the south, the Frisco road made these rates. This is a matter of traffic policy over which we have no control so long as the carrier adopting such policy does not discriminate as between communities. The figures given above abundantly show that the Birmingham district has almost exclusively drawn its supply of fire brick from the Kentucky and Ohio fields. The St. Louis plant desired access to the same district, and the Frisco accordingly made a rate which allowed them to have entrance thereto upon a preferential basis as against their eastern competitors. It does not lie with this Commission to say that a carrier may not do

this, nor can we reduce rates from other points because of such competition.

It is true that we have held in cases where joint or proportional rates were made by all of the carriers leading to certain points of destination that it was within our power to end a discrimination as between points of origin by a reduction in the rate from a certain point that was discriminated against. *Indiana Steel & Wire Co. v. C., R. I. & P. Ry. Co.*, 16 I. C. C. Rep., 155; *Railroad Commission of Tennessee v. Ann Arbor R. R. Co.*, 17 I. C. C. Rep., 418. This principle, however, only has application where the traffic from both groups of origin is *necessarily* transported to destination by the same connecting carrier or carriers and where it is possible for the delivering carriers to put an end to the discrimination by the exercise of their power to refuse to enter into preferential joint or proportional rates. The Frisco and the Mobile & Ohio have through lines from St. Louis to Birmingham, the principal market in controversy here, and therefore control the rates for the full distance. The record in this case does not reveal that any of the traffic from St. Louis, as well as from Ashland, is delivered at any points of destination by carriers who are an essential part of the two through routes.

Wherever a like kind of traffic is transported from two similarly situated points of origin by the same carrier or carriers they may not discriminate between such points. That is to say, if the Chesapeake & Ohio, which alone serves Ashland, also had an exclusive line out of St. Louis it could not give to St. Louis a preferential rate. Furthermore, if the Louisville & Nashville alone delivered in Birmingham, participating in the two through routes and joint rates for both St. Louis and Ashland traffic it could not be a party to a preferential joint rate or proportional in favor of St. Louis. The test of the discrimination is the ability of one of the carriers participating in the two through routes from the two points of origin to the same point of destination to put an end to the discrimination by its own act. Hence we have said above that to give rise to discrimination between two points such as St. Louis and Ashland there must be one or more carriers participating in the discrimination that are necessary to the movement between the two points of origin and the destination—a carrier or carriers without which the through routes and rates could not be established or maintained. But we find no such condition in this case, so far as complainants have indicated. St. Louis may reach the Birmingham district over the lines of the Frisco or the Mobile & Ohio alone. Neither the Frisco nor the Mobile & Ohio serves Ashland. The Chesapeake & Ohio serves the Ashland kilns, but neither directly nor indirectly those of St. Louis.

To be sure the Louisville & Nashville in connection with the Chesapeake & Ohio forms a through route from Ashland to Birmingham

and also has a through route of its own from St. Louis; but—and this is the important condition—the Ashland brick could move to Birmingham without the intervention of the Louisville & Nashville by way of the Chesapeake & Ohio and the Queen & Crescent roads, none of which are vital to a movement from St. Louis. Thus we see that by withdrawing from the St. Louis business the Louisville & Nashville could not put an end to the preference in favor of St. Louis or give relief to Ashland. To be sure, it does not appear equitable to find the Louisville & Nashville making a net rate of 11 cents from St. Louis to Birmingham, a distance of 530 miles, while participating in a rate of 16 cents from Ashland to Birmingham, a distance of 523 miles, of which 16-cent rate the Louisville & Nashville's proportion upon delivery made to it at Lexington is 12 cents, the distance from Lexington to Birmingham being 400 miles. Thus we have 11 cents charged for a 530-mile haul as against a rate of 12 cents for a 400-mile haul. But this contrast arises out of the desire of the Louisville & Nashville to compete with the other carriers out of St. Louis, whereas it is not compelled to compete out of Lexington with either the Frisco or the Mobile & Ohio. It manifestly would do Ashland no good whatsoever for the Louisville & Nashville to withdraw from the St. Louis business. It seems unnecessary here to state that the power has not been lodged with this tribunal to equalize economic advantages, to place one market in competition with another, or to treat all railroads as a part of one great whole, apportion to each a certain territory, or to require all to meet upon a common basis at all points. Carriers, says the law, may not give undue preference or unjustly discriminate. And as to these charges made against defendants we can not find that they are guilty in this instance.

We pass next to the question of the reasonableness of the rates, and in so far as the complainants' case rests upon a comparison with the St. Louis rates we can not accept this standard as in any way conclusive. If the rates from St. Louis have been and are too low, would it therefore follow that the rates from Ashland were too high? Or if the St. Louis rate were still further reduced—say to 10 cents—would it follow that the action of the carriers out of St. Louis would be a measure of the reasonableness of the rate from Ashland to Birmingham? These questions seem to be self-answering.

So long as the rate from St. Louis was the same as, or higher than, the rate from Ashland, the fire-brick burners of the latter district were indifferent to the rate. This they freely admit. It is the consumer who pays the freight. If other and competing kilns are at a disadvantage as to the rate adjustment to Birmingham the Ashland manufacturer will have the market very much to himself. Therefore it is, as complainants state, that no complaint as to the Ashland

rate was made until St. Louis brick began to sell in Birmingham, thus compelling the Ashland brickmaker to lower his price to meet the new competitor. The brickmakers of Kentucky then sought to have the Frisco raise its rate. This they say would satisfy them now, inasmuch as they are interested in the adjustment more than in the rate itself. A lower rate from St. Louis means that the Ashland manufacturers must absorb the difference in the rate in the price of their brick when competing with St. Louis manufacturers. Accordingly, they urged their own lines, the Louisville & Nashville, the Chesapeake & Ohio, and others, to insist upon this policy with the Frisco and other carriers out of St. Louis. But these conferences failed of their purpose. The Frisco, they reported, was obdurate. Even though it hauled so small a percentage of the brick consumed in the south it would not yield the revenue because it thought it saw possibilities of developing a larger traffic from the industries local to its line. The rate was low, it said, but not so low but that it could be made lower if there was occasion. Failing, then, in securing an advance in the rate to their competitors, the Ashland manufacturers sought a reduction in their own rates. If the rate was to come from their profits they must give consideration to its size. And thus came this complaint.

The carriers say that the rate of 12 cents from Cincinnati to Birmingham is reasonable, because the traffic has moved freely under it and because "no other low-grade commodity has a lower rate from Cincinnati excepting sand." While Cincinnati is taken as the basing point on this traffic there are several facts of first importance to be considered in this connection: (1) Two-thirds of the brick which go to the southern furnaces come from points south of the Ohio River and are subject to no bridge charge. (2) Cincinnati is 484 miles from Birmingham and Ashland is 523 miles, Ashland being situated at the junction of the main line of the Chesapeake & Ohio and its branch to Lexington. (3) Three of the largest plants, actually producing 64 per cent of all the brick that goes to the south, are located at the stations of Haldeman, Hayward, and Olive Hill, which are on the Chesapeake & Ohio within 75 miles of Lexington. (4) Lexington is 84 miles south of Cincinnati, but by arrangement between the carriers carries the Cincinnati rate of 12 cents, so that if the brick moves from Ashland through Newport, across the river from Cincinnati, or through Lexington (the haul to the former being 145 miles and to the latter 124 miles), the same rate is applied.

It becomes at once apparent that to deal with the Ashland rate from the standpoint of the Cincinnati rate on brick as contrasted with the rates on other commodities from the same point is to evidence a misconception of the situation. If the rate on fire brick were 16 cents from Cincinnati, as against a rate of 16 cents from Ash-

land, there would be strength in this comparison. Here, however, the commodity does not originate in Cincinnati, nor does it in fact in the greater part pass through Cincinnati, which is on the north side of the Ohio. Furthermore, the direct route, and that by which the traffic moves from Ashland to Birmingham, is through Lexington, 84 miles to the south of the river. We have recognized at all times the adjustment made by the southern carriers at the Ohio River crossings on freight coming from the north. This adjustment has been the result of many years of trying experience, when the carriers were in more active competition than they are at present, when equalization of rates was effected by rebates, and when the carriers from the various crossings were not held under sympathetic control. This adjustment, however, has never been held to justify a rate-basing system as to products originating south of the river which deprived such southern points of their advantages and forced them to pay a rate through a river crossing which they did not touch.

As to Ironton, Portsmouth, and Oak Hill, points of production north of the river, we shall make no order.

We find the rates from Haldeman, Hayward, and Olive Hill to all points of destination involved to be unreasonable, and that a reasonable rate should be fixed which would be 1 cent less per 100 pounds than is at present charged to such points. We also find the present rate from Ashland and Taylors to the points of destination here involved to be unreasonable to the extent of 1 cent per 100 pounds. An order will be entered accordingly.

22 I. C. C. Rep.

INVESTIGATION AND SUSPENSION DOCKET No. 51.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF VEHICLES.

Submitted November 24, 1911. Decided December 12, 1911.

Upon all the facts developed at this investigation into the advances in rates on vehicles from Suffolk, Va., to points in North and South Carolina; *Held*, That there are no sufficient grounds upon which the Commission may permanently suspend the operation of the tariff advancing the rates.

J. L. Jeffries and *H. N. Fitzgerald* for Board of Trade of Suffolk, Va., and manufacturers.

Frank W. Gwathmey for Atlantic Coast Line Railroad Company, Seaboard Air Line Railway, and other lines.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

Upon the informal complaint of the Parker Manufacturing Company, the One Buggy Company, and others engaged at Suffolk, in the state of Virginia, in the manufacture of light buggies and other vehicles, an order was entered on June 22, 1911, suspending the operation of a new tariff of the Atlantic Coast Line and its connections, referred to hereinafter for convenience as the defendants, providing increased rates, to become effective on July 4, 1911, for the transportation of vehicles from Suffolk to points in the states of North and South Carolina. The complaint in general terms was that the proposed rates were not only largely in excess of the rates then in effect, but were unreasonable when considered in the light of the history of the rates on vehicles in that territory. It was also alleged that the proposed higher rates were in violation of an understanding theretofore had between representatives of the defendants and representatives of the vehicle manufacturers at Suffolk. The essential facts developed at the hearing are as follows:

The Parker Manufacturing Company was organized in February, 1909. Its substantial factory building at Suffolk was opened for

operation in May, 1909. At that time and until June, 1910, the traffic moved under class rates which had controlled the interstate shipment of vehicles in this territory for many years. But the railroad commission of the state of North Carolina had put in effect a very low tariff on vehicles moving between points in that state, and this fact, together with the urgency of the Suffolk manufacturers, led the defendants in June, 1910, to try a reduced scale of rates on interstate movements. To Florence, for example, a fairly typical point in the state of South Carolina, the rate on buggies from Suffolk in less-than-carload lots now became 70 cents as compared with the previous class rate of 80 cents per 100 pounds, and 60 cents on carload shipments as compared with the previous class rate of 70 cents. The reduced rates are still in effect as a consequence of our action suspending the tariff filed by the defendants on June 3, 1911, restoring their interstate charges to the class basis substantially as the rates had existed prior to the reduction.

The progress of the new enterprise of manufacturing buggies at Suffolk was not impeded or retarded by the class rates that were in effect when the factory was opened and which continued in force for about a year afterwards. During the few months intervening between May, 1909, when the buggy company commenced to do business, and January 1, 1910, its output amounted to 1,102 vehicles. During the calendar year 1910 it manufactured 2,937 buggies. These moved during the first six months of that year under class rates, although for the balance of the year the lower scale of rates controlled the traffic. From June 1, 1911, until the hearing on November 23, 1911, it manufactured and sold 3,220 buggies. It appears, therefore, that although its business has grown more rapidly since July 4, 1910, when the lower rates went into effect, the company nevertheless flourished under the previous higher rates and was able at once to become an important competitor in the sale of buggies in this territory.

There is an intimation on the informal complaints, as heretofore stated, of an agreement or understanding between the Suffolk manufacturers and the traffic officials of the defendants that the lower scale of rates made effective in July, 1910, would be continued as the maximum rates for the future. No evidence, however, was offered at the hearing in support of this allegation. It did appear that the reduced rates were put in force as the result of negotiations between the parties in interest, but there was no evidence tending to show anything beyond a willingness on the part of the carriers to give the trial. The One Buggy Company, which also complains of the reduction of the previously existing rates, opened its factory while the lower rates were in effect. But the witness who testified on

behalf did not claim that there had been any agreement or understanding between his company and the carriers to the effect that the lower scale of rates would be the maximum scale for the future. All that developed in this regard at the hearing was that this company had an opportunity of acquiring a suitable site for its factory at Suffolk on the tracks of other lines, but purchased more expensive property on the tracks of the Atlantic Coast Line because the rates on buggies from Suffolk were materially less at that time over that line than over the other lines reaching points in the Carolinas. Even if it were within our power to enforce such an agreement with respect to rates, there is therefore no basis of record for a finding that any such understanding was reached.

There are four carriers serving Suffolk whose lines extend into North and South Carolina—the Atlantic Coast Line, the Southern Railway, the Seaboard Air Line, and the Norfolk Southern. Of these the Atlantic Coast Line was the only one that reduced its rates on vehicles moving from Suffolk to points in the Carolinas. The other carriers were requested by the manufacturers at Suffolk to meet the reduced rates of the Atlantic Coast Line. They refused to do so on the ground that the class rates were already low enough. They yielded the traffic to the Atlantic Coast Line, so far as competitive points were concerned, rather than to accept its vehicle rates from Suffolk. This is a significant feature in the case, and its importance is emphasized by the fact that at Washington, Wilson, and a dozen or more other towns in North Carolina are factories with an output of buggies for sale in this territory as large as and possibly larger in some cases than the output of the factories at Suffolk. They compete actively with the Suffolk factories in both North and South Carolina, and on interstate shipments are paying charges which are published as commodity rates, but which are in general equal to the regular class rates. This general basis of rates has been in effect for many years on those lines and without complaint, so far as a cursory examination of our files discloses.

The record therefore clearly develops the fact that for substantially a year and a half the buggy manufacturers at Suffolk, through the action of the Atlantic Coast Line in reducing its rates, have been enjoying a substantial advantage over their competitors at other points in this territory with respect to interstate shipments. An officer of a company at Franklin, in the state of Virginia, 18 miles west of Suffolk on the Seaboard Air Line, that manufactures buggies of the same general appearance, class, and value as those manufactured at Suffolk, when testifying said that, while he did not complain of the class rate on buggies from Franklin—and his factory as a matter of fact had enjoyed reasonable prosperity under the class

rates—he did object to a rate adjustment which gave to his competitors at Suffolk more favorable rates to competitive points in North and South Carolina, particularly in view of the fact that Franklin had always been grouped with Suffolk and is now grouped with it under class rates to competitive points.

In explaining the reasons that led the defendants to file a tariff restoring the class rates, the freight traffic manager of the Atlantic Coast Line showed that most of these manufacturers are really mere assemblers of parts purchased in the north, and in the central states, and that the factories at Suffolk enjoy an advantage under their inbound rates on buggy parts and materials that is estimated to amount to a difference of 60 cents a buggy in their favor, when compared with the cost under the inbound rates to the manufacturer at Franklin, only 18 miles west of Suffolk; and to 93 cents per buggy in favor of the factories at Suffolk when compared with the inbound rates on buggy parts to North Carolina manufacturing points. He also testified that the lower scale of rates put in effect on June 17, 1910, was prepared by rate clerks in his office under a misapprehension of his instructions. We need not go into the details of the explanation made of the error to which he refers. It will suffice to say that the result of the misunderstanding was that rates from Suffolk to 156 points on the Atlantic Coast Line in North Carolina were less than the state rates from Washington to the same points, notwithstanding the fact that Suffolk is 40 miles more distant from those points than is Washington. This is a manifest inconsistency that ought not to continue.

The tariff suspended by the Commission names also increased rates on wagons from Suffolk to the same territory. An informal complaint against the increase was made by a manufacturer at Suffolk, whose yearly output of logging wagons is said to exceed 500. No appearance, however, was made on his behalf at the hearing, and there is no occasion for a separate consideration of the rates on wagons. The testimony for the defendants, as was expressly stated, was directed toward those rates as well as the rates on pleasure vehicles. Upon such information as is at hand there is no material difference of fact with respect to the traffic in wagons that would require any other action on those rates than that here taken with respect to the rates on buggies.

Upon all the facts developed as the result of this inquiry and investigation we think that the defendant lines have justified the tariff filed on June 3, 1911, providing for the restoration of the class rates previously in effect, and that there are no sufficient grounds upon which we may permanently suspend the operation of that tariff.

It was expressly stated at the hearing that the increase made in their vehicle rates by these defendants from Suffolk was not part of any general advance contemplated by the carriers in the rates on such traffic in southern classification territory. We have therefore considered the matter solely from the point of view of the limited and comparatively local situation before us and are not to be understood as closing it from examination and review should occasion arise for a more extended inquiry with respect to vehicle rates in this part of the country.

An order will be entered vacating the order of suspension heretofore entered herein.

22 I. C. C. Rep.

No. 3222.

DIAMOND COAL & COKE COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted July 7, 1911. Decided December 5, 1911.

Rate on mining-car wheels from Rock Island, Ill., to Diamondville, Wyo., found unreasonable so far as it exceeds the rate on mining cars between the same points. Reparation awarded.

William A. Glasgow for complainant.

H. A. Scandrett and *F. C. Dillard* for Union Pacific Railroad Company and Oregon Short Line Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in coal mining at Diamondville, Wyo. Its petition, filed April 8, 1910, alleges that it was charged by defendants an unreasonable rate for the transportation of one carload of car wheels on axles, shipped January 24, 1908, from Wilmington, Del., to Diamondville. Reparation is asked. The claim was first filed with the Commission November 5, 1909.

The shipment consisted of 400 car wheels on axles, parts of coal-mining cars or "skips," and two boxes of felt. No question is raised as to the charges on the felt, nor is there any complaint as to the charge made for the transportation of the car wheels and axles east of the Mississippi River. West of that river there was in force at the time of shipment a commodity rate of 97½ cents per 100 pounds on mining-car skips, and complainant contends that the rate charged upon the wheels was unreasonable to the extent that it exceeded said commodity rate.

The routing instructions given by the shipper were as follows: "Via C. R. I. & P., U. P., and O. S. L. Rys." The shipment moved via the Baltimore & Ohio to Burr Oak, Ill.; Chicago, Rock Island & Pacific to Pullman, Colo.; Union Pacific to Granger, Wyo.; and Oregon Short Line to destination. The rates paid on the car wheels, as shown on amended expense bill, were 28 cents to Chicago and \$1.33 beyond, making a through rate of \$1.61 from Wilmington to Diamondville. On this basis, charges were collected amounting to \$1,094.80.

The tariffs on file indicate that when the shipment moved a lower combination than that above stated was available. Baltimore & Ohio Tariff, I. C. C. No. 5435, named fifth class rate of 33 cents from Wilmington to Rock Island, Ill., applicable to traffic destined beyond that point. Union Pacific Tariff, I. C. C. No. 1976, provided that the rates from Mississippi River territory, including Rock Island, Ill., to Diamondville, Wyo., should not exceed the rates contemporaneously in effect to Utah common points shown in W. A. Poteet's Tariff, I. C. C. No. 194. By reference to the latter tariff we find a commodity rate of \$1.21 on mining-car wheels from Mississippi River territory, including Rock Island, Ill., to Utah common points. When the shipment moved, the maximum rate clause above mentioned had not been condemned by the Commission. It will therefore be seen that there was a combination of intermediate rates amounting to \$1.54.

Complainant contends that the commodity rate of 97½ cents applicable on mining-car skips should also be applied on a part of the skip. The testimony shows that the wheels are an integral part of the skip and are subject to such rough usage in the mines that it is necessary to replace them several times before the body of the skip is worn out. Had these wheels been shipped with the bodies there would have been no question that the 97½-cent rate was applicable. A shipment so made would not load nearly so heavily as a shipment of the wheels alone. The bodies of the skips are bulky and can not be loaded to utilize all available car space. The wheels can be loaded very compactly and require for transportation no equipment different from that provided for the bodies. Under the rate of 97½ cents a particular car loaded with wheels would produce more revenue than one loaded with skip bodies or with the completed skip, including the wheels. The evidence does not indicate that wheels are any more liable to damage in transit than the completed skip.

Upon consideration of all the facts disclosed by our investigation, we are of opinion, and so find, that the rate assessed west of the Mississippi River for transportation of these car wheels was unreasonable so far as it exceeded the commodity rate of 97½ cents, applicable to mining-car skips. Reparation will be awarded against the lines west of the river in the sum of \$207.40, with interest from February 17, 1908, and those defendants will be required for the future to cease and desist from charging a higher rate for the transportation of mining-car wheels than they contemporaneously charge for the transportation of mining skips or cars.

No. 3232.

T. N. ATCHINSON

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted December 1, 1910. Decided December 11, 1911.

Rates on fire brick from Perla, Ark., to Ruston, Monroe, Tallulah, Winnfield, Alexandria, and Shreveport, La., found to have been unreasonable and reasonable rates established for the future.

H. M. Armistead for complainant.

James C. Jeffery and *Herbert J. Campbell* for St. Louis, Iron Mountain & Southern Railway Company.

W. F. Dickinson and *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant manufactures brick at Perla, Hot Springs county, Ark., and ships the same to points in that and other states. His main product is a low-grade fire brick used for boiler settings and in other places where some resistance to heat is required; he also makes some paving and sidewalk brick. His petition, filed April 12, 1910, puts in issue the reasonableness of the present rates on fire brick from Perla, Ark., to certain points in Louisiana, and is based mainly upon a comparison between the rates on common brick and the rates on fire brick. The complaint as filed did not ask reparation; but at the hearing request for leave to amend in that respect was noted in the record. This request has not been followed by an amendment of the petition and there is no evidence touching specific shipments. Therefore that feature of the matter will not be considered.

For about 18 years complainant has been making brick at Perla and shipping the greater portion of his product to other points. Complainant testified that until November 21, 1908, his products

were accepted by the carriers as "brick" and the rates imposed for the transportation were low, approximately those now applied to "common brick." Since that date the defendants have classified complainant's chief product as "fire brick" and the rates under this description have been determined by deducting a differential from the St. Louis fire-brick rate on what was assumed to be the same commodity. Perla is in what is known as Fort Smith-Little Rock territory, about 390 miles southwest of St. Louis. The defendants attempted to justify the classification of complainant's product and the rates imposed under such classification upon the ground of competition between complainant's brick and that produced at St. Louis. In other words, the rates in issue are defended as reasonable upon two theories: First, that complainant finds no substantial competition except from St. Louis, and has a lower rate than applies to fire brick from that point; and, second, that no material relief can be afforded complainant without also lowering the rates on fire brick from St. Louis.

The record before us is unsatisfactory in that it does not make certain the application of the various rates upon brick, common or fire, or show the qualities of the various bricks discussed as fire bricks and wherein they compete.

It should be borne in mind that the entire rate situation with regard to brick in southwestern territory is not before us in this case, but merely a complaint attacking the reasonableness of certain rates.

According to the complainant no distinction was made in the rates on the various kinds or grades of his brick prior to November 21, 1908. This statement may be correct, although the tariffs show different rates published for common brick and for fire brick before that time. Using Monroe, La., as an illustrative point, the history of the rates involved may be briefly summarized as follows: From February 24, 1900, to January 21, 1908, the rate on common brick from Perla to Monroe was 7 cents. A tariff effective June 16, 1902, named a rate of 15½ cents from Perla to Monroe on brick other than common. By supplement effective March 17, 1904, this rate was reduced to 14½ cents. On January 21, 1908, the rate on common brick was reduced to 5 cents and on November 1, 1908, advanced to 6 cents. On the latter date the rate on fire brick was increased to 17 cents.

In *Metropolitan Paving Brick Co. v. A. A. R. R. Co.*, 17 I. C. C. Rep., 197, the Commission decided that there is no transportation reason for making different rates on different grades of fire, building, and paving brick. It is true that the report in that case had to do with the situation as it existed in the transportation of brick from central freight association territory to trunk line territory; it is also

true that common brick was not included in the conclusions reached by the Commission, the report stating:

In the consideration of these questions common building brick, so called, has no place. This grade of brick is produced from ordinary clay at kilns in practically every community, and moves on local rates for short distances only. There is little or no movement of common brick from any point in central freight association territory to trunk line territory. It was agreed by all parties that any adjustment of the classification or of rates applicable thereto should not include common building brick. Enameled brick and high-class brick shipped in containers are also excluded from the adjustment here made.

In the following table the present rates from Perla, Ark., to the various points of destination named in the complaint on common brick and fire brick are set forth, as well as the distance and the resulting revenue per ton per mile:

From Perla, Ark., to—	Distance.	Brick, common, c. l. minimum 40,000 pounds.		Brick, fire, c. l. minimum 40,000 pounds.	
		Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Ruston, La	382	7	3.66	12	6.28
Monroe, La	194	6	6.18	17	17.52
Tallulah, La	213	7	6.57	13½	12.67
Winnfield, La	337	12	7.12	17	10.09
Alexandria, La	291	7	4.81	17	11.68
Shreveport, La	178	8	8.98	17	19.10

The value of the complainant's product at the kiln was given as from \$10 to \$13 per 1,000, which is greater than the value of common brick, but not sufficiently high to indicate strong refractory qualities. At the hearing the representatives of the Iron Mountain road offered to apply the Arkansas court rates to fire brick to these interstate points. The result of such action would be as shown in the following table:

Proposed Arkansas court rates.

From Perla, Ark., to—	Distance.	Brick, common, c. l., minimum 40,000 pounds.		Brick, fire, c. l., minimum 26,000 pounds.	
		Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Ruston, La	382	10	5.28	17	8.90
Monroe, La	194	6	6.18	13	13.40
Tallulah, La	213	7	6.57	14	13.14
Winnfield, La	337	9	5.34	16	9.49
Alexandria, La	291	8	5.49	15	10.30
Shreveport, La	178	6	6.74	18	14.60

This offer of the principal defendant was confined to the court rates as applied to fire brick; we do not understand the offer to extend to giving to fire brick the court rates on common brick; but in view of the facts presented in this record we believe the offer could properly have gone further. Certainly no facts have been presented which warrant rates on fire brick so grossly in excess of the rates on common brick. An examination of the present rates on common and fire brick from Perla to the various points named in Louisiana shows an unwarrantable irregularity in the rates. For a haul of 382 miles the rate on common brick yields revenue per ton per mile of 3.66 mills, whereas the rate for a haul of 337 miles yields revenue per ton per mile of 7.12 mills. The rates on fire brick, with the exception of the rate to Ruston, yield revenues that are not only ill-adjusted but clearly excessive.

Upon consideration of all the facts and circumstances disclosed by the record it is our conclusion that the rates in issue are unreasonable, and we find that reasonable rates for the future for the transportation of fire brick from Perla, Ark., to the points in Louisiana named in the complaint should not exceed 12 cents per 100 pounds to Ruston, 7 cents to Monroe, 7½ cents to Tallulah, 11 cents to Winnfield, 10 cents to Alexandria, and 7 cents to Shreveport. An order will be entered accordingly.

22 I. C. C. Rep.

No. 3257.

REDPATH-VAWTER CHAUTAUQUA SYSTEM

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted April 7, 1911. Decided December 11, 1911.

Complainant gives chautauqua entertainments in tents, and moves its equipment from place to place, paying the less-than-carload rate on the constituent parts, including tents and poles, camp chairs, lumber, etc. Upon application for a carload rating; *Held*, That when properly described and restricted in the tariffs, chautauqua outfits in carloads should be rated not higher than fifth class, minimum weight 20,000 pounds.

Guernsey, Parker, and Miller for complainant.

William Ellis and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

S. A. Lynde for Chicago & North Western Railway Company.

Wallace T. Hughes and *W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation, with principal office at Cedar Rapids, Iowa. It is engaged in giving chautauqua entertainments, principally in the states of Minnesota, Iowa, and Missouri. The entertainments are given in tents, and complainant moves its equipment from place to place, paying the less than carload rates on the constituent parts thereof. The relief prayed is the fixing of a just and reasonable carload classification and minimum weight on the kind of shipments made by complainant, described as "chautauqua outfits."

Practically two-thirds of its shipments are interstate, and the average haul is from 150 to 175 miles. In 1909 it made 110 shipments, which moved a total distance of 21,000 miles. Complainant uses 12 outfits, each outfit being worth from \$600 to \$700 in the secondhand condition in which it is employed. Each outfit is shipped

in one car, which is loaded and unloaded by the shipper, largely for its own convenience. The shipments are moved in freight service with an attendant, and, as a rule, no other freight is loaded into the car. In 1909 out of 32 claims by complainant for overcharge in freight rates 31 were paid by the carriers. The number of claims represents about 30 per cent of all shipments, and the percentage would be greater if confined to interstate shipments. This is said to be unsatisfactory to both shipper and carrier, and would be obviated by applying a uniform carload rate to the shipment as a unit. The following is descriptive of an average chautauqua outfit:

	Number.	Weight.	Total weight.	Class.	Percentage of total weight.
		<i>Pounds.</i>	<i>Pounds.</i>		
Canvas, pieces.....	20	2,100	2,100	1	0.114
Camp chairs, folding.....	450	2,700			
Wood settees, flat.....	40	1,000	3,700	2	.201
Bundle tackle (boxed).....	1	50			
Tent pins, bundles.....	9	450	2,945	3	.16
Main poles.....	3	595			
Quarter poles.....	14	600			
Well and fence poles.....	225	1,250			
Lumber, pieces.....	100	6,230	9,595	4	.523
Platform material, k. d.; circus seats and supports, pieces.....	225	3,365			
Total.....			18,340		.998

Western classification has five numbered and five lettered classes, and the prayer is that the entire outfit be given class-C rates, with minimum weight of 24,000 pounds. This is the rating under the Iowa classification. In Illinois shipments are rated class 7, minimum 20,000 pounds. There is no carload rating for this traffic either in official or southern classifications.

Complainant calls attention to the fact that the movement of its chautauqua outfits is always upon a carload basis, each set of equipment constituting a carload, the weight of which is approximately 18,000 pounds; that the shipments are invariably loaded and unloaded by the complainant and possess most of the characteristics of carload shipments; that the value of the equipment is low, and no claims for damages have been presented.

The principal witness for defendants was the chairman of the western classification committee. When asked by counsel for defendants if it would be feasible to give a carload rating on a general mixed carload under the description of chautauqua outfit that could be properly limited in its application, he replied that he thought it could be done. He further stated that a mixed carload usually took a lower classification than the lowest classified article in the car in less-than-carload quantities. It appears, therefore, that defendants

enter no serious objection to establishing a carload rate if it can be so limited in its application as to prevent abuses. The real point at issue is the classification to be accorded these outfits. Complainant has suggested class C, with a minimum of 24,000 pounds, or class B, minimum 20,000 pounds, while defendants state that they should be given fourth class rates, with a minimum of 20,000 pounds. There are numerous mixed carload rates which have been voluntarily established by the carriers. For example: Merry-go-rounds, miniature railroads, steam carousals, and riding galleries, third class, minimum 16,000 pounds; graders', bridge builders', and contractors' outfits, secondhand, class A, minimum 24,000 pounds; household goods and emigrant movables, class B, minimum 20,000 pounds.

Upon the record we feel that it is feasible to provide a carload rating on chautauqua outfits of the character hereinbefore described, and that they should be rated not higher than fifth class with a minimum of 20,000 pounds. There exists the difficulty of adequately describing and restricting the application of a rating to these outfits, but this should be no more perplexing than the description of other outfits now appearing in the classifications. We shall leave it to the carriers to frame suitable tariff provisions in accordance with the views herein expressed.

Complainant sought to amend its petition by adding a prayer for the payment of damages on past shipments, but on the facts of record we do not find that complainant is entitled to an award of reparation.

No. 3416.

GAMBLE-ROBINSON COMMISSION COMPANY ET AL.

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted December 22, 1910. Decided December 5, 1911.

Rates varying from 20 to 34 cents per 100 pounds on watermelons in carloads from points in southeastern Missouri to Minneapolis and St. Paul, Minn., and to other northern destinations not found to have been unreasonable.

L. H. Stinchfield and *Leonard Brisley* for complainants.

James C. Jeffery and *Herbert J. Campbell* for St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company.

F. H. Wood and *Edward A. Haid* for St. Louis & San Francisco Railroad Company and Chicago & Eastern Illinois Railroad Company.

George U. Seever and *Lynn S. Helgersen* for Minneapolis & St. Louis Railway Company and Iowa Central Railway Company.

F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

W. F. Dickinson and *T. A. Gantt* for Chicago, Rock Island & Pacific Railway Company.

Richard L. Kennedy for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainants are corporations severally engaged in the wholesale fruit and produce business, with principal offices at Minneapolis, Minn. Their petition, filed July 21, 1910, with amendments thereto, alleges that they were charged by defendants unreasonable rates for the transportation of watermelons in carloads from points in southeastern Missouri to points in Minnesota and adjacent states. Reparation is asked.

During the seasons of 1908 and 1909 the several complainants shipped over defendants' lines from Holcomb and Blodgett, Mo., and

from other points in what is known as the melon-producing territory of southeastern Missouri, to Minneapolis and St. Paul, Minn., and other northern markets, about 175 carloads of watermelons, for which transportation charges were collected on the shipments that moved to Minneapolis and St. Paul and to points taking the same rate (about four-fifths of all shipments), at a rate of 29 cents per 100 pounds, based on a minimum of 25,000 pounds. On the remaining shipments charges were collected at rates ranging from 30 to 34 cents per 100 pounds.

The above rates were combinations made up of 11 cents from producing points to St. Louis and rates of from 18 cents to 23 cents beyond. These combination rates are alleged to have been unreasonable to the extent that they exceeded the sum of an intrastate rate of 7.2 cents from the same producing points to St. Louis, as fixed by a Missouri statute, and rates varying from 18 cents to 23 cents beyond, making combination through rates of from 25.2 cents to 30.2 cents. No complaint is made of the rates beyond St. Louis. The issue therefore relates only to the reasonableness of the 11-cent factor in the combination rates.

Complainants also contended that the maintenance of a 7.2-cent rate to St. Louis on intrastate shipments, as compared with an 11-cent rate for the transportation under substantially similar conditions of interstate shipments, was unduly discriminatory in that it gave the St. Louis dealers an unfair advantage in the competition with dealers located in other states.

Complainants further sought to show that the rates in question were relatively unreasonable by citing numerous other rates on melons. For example, the rate from Terral, Okla., to Minneapolis, a distance of 1,067 miles, being 32½ cents, the earnings per ton-mile are 6.1 mills. The rate from Joplin, Mo., to Minneapolis, a distance of 776 miles, being 26 cents, the earnings per ton-mile are 6.7 mills. The ton-mile rate was shown to be approximately the same from points in southern Indiana and southern Illinois to Minneapolis and St. Paul. The ton-mile earnings from the producing points in question to Minneapolis are about 7.6 mills. Defendants cited other rates on melons in which the ton-mile earnings were higher. For example, the following appears in respect of shipments to St. Louis:

From—	Rate.	Dis- tance.	Per-ton per-mile earnings.
	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>
Jacksonville, Fla	40.5	928	8.7
Valdosta, Ga.....	36.5	866	8.4
Cordele, Ga.....	33.4	779	8.6
Carmi, Ill	10.2	127	15.9
Oaktown, Ind.....	14.5	165	17.5

Rates from the producing points to other northern destinations, such as Detroit, Mich.; Buffalo, N. Y.; Chicago, Ill.; and Omaha, Nebr., were also cited by defendants, showing substantially the same result as to the earning per ton-mile. In the instances cited by defendants the earnings are higher than from the same points to Minneapolis and St. Paul under the 29-cent rate.

The evidence shows that the state rate of 7.2 cents on melons yields lower earnings than the rate on any other commodity moving between the same points; that the rate was lower than the state rate on melons in any of the adjacent states; that this rate is published under protest; and that its reasonableness is now being contested in court by the defendants.

Furthermore, the contention of complainants that the 11-cent rate results in undue preference of Missouri jobbers is unsupported by the facts, for in order to take advantage of the state rate into St. Louis the shipper would incur expenses of unloading and reloading such shipments which, when added to the 7.2-cent rate and necessary switching and possible demurrage charges, would exceed the cost of transportation under the 11-cent rate.

The contention that the 11-cent rate is unreasonable as compared with other rates on melons to Minneapolis does not seem to be well founded. Complainants' comparison of rates is open to the criticism that it loses sight of the fact that the longer the distance the lower should be the cost per ton-mile. Looking at the evidence as a whole, we find that of the rates cited for comparison some showed higher earnings, while others showed lower earnings, and if we are to draw a conclusion from these comparisons it must be that the earnings under the rates in question are not unreasonably high, but are a fair average.

While the 11-cent rate from producing points to St. Louis returns ton-mile earnings of about 12½ mills, we do not believe this to be unreasonable, since, as appears from the evidence, the originating carrier of melons has an extra expense of \$1.10 for slatting cars and a per diem charge averaging \$5 per car arising from the necessity of "parking" cars in order to provide equipment for prompt forwarding. Upon careful consideration of the record, we do not find the through charge or the 11-cent factor included therein to be unreasonable or unduly discriminatory. The petition will therefore be dismissed, and it will be so ordered.

No. 3765.
SUNDERLAND BROTHERS COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted May 25, 1911. Decided December 5, 1911.

Rates on brick in carloads from the Kansas gas belt to Lewis, Marne, Oakland, Shelby, and Walnut, Iowa, found unreasonable so far as they exceed rate contemporaneously in effect from the same points of origin to Mississippi River territory. Reparation awarded.

C. E. Childe for complainant.

C. C. P. Rausch for Missouri Pacific Railway Company.

Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

The complainant, a corporation, with its principal place of business at Omaha, Nebr., alleges in its petition, filed January 18, 1911, that it was charged by the defendants unreasonable rates for the transportation of six carloads of brick shipped on various dates in 1909 from Coffeyville, Buff City, and Tyro, Kans., to Lewis, Marne, Oakland, and Shelby, on the lines of the Chicago, Rock Island & Pacific Railway Company in western Iowa. It is alleged that the rates charged were unreasonable to the extent that they exceeded a rate of 10 cents per 100 pounds contemporaneously in effect from the same points of origin to more distant points on the Rock Island in what is known, for rate-making purposes, as Mississippi River territory. The complainant asks for reparation and for an order requiring the defendants to desist from charging higher rates on brick between the points of origin and destination herein than are charged to more distant points in Mississippi River territory.

The following table gives the essential details concerning the shipments in question :

Date of shipment.	From—	To—	Weight.	Rate per 100 pounds.	Total charges.
			Pounds.	Cents.	
April 23, 1909	Buff City, Kans.....	Lewis, Iowa	44,000	11.8	\$51.92
June 5, 1909	Tyro, Kans.....	Shelby, Iowa	81,600	13.1	106.90
June 7, 1909	do	Marne, Iowa ...	62,400	11.7	73.00
July 8, 1909	Coffeyville, Kans.....	Oakland, Iowa ...	62,400	13.1	81.74
July 14, 1909	do	Shelby, Iowa.....	62,400	13.0	81.12
October 11, 1909.....	do	do	60,000	11.8	67.80

Subsequent to the filing of the complaint, by stipulation of the parties, the following shipments were added:

Date of shipment.	From—	To—	Weight.	Rate per 100 pounds.	Total charges.
			<i>Pounds.</i>	<i>Cents.</i>	
July 1, 1910	Tyro, Kans.....	Shelby, Iowa.....	87,325	11	96.06
Do.....	do.....	do.....	87,325	11	96.05
October 21, 1910.....	Buff City or Coffeyville, Kans.	Oakland, Iowa...	43,512	12.9	56.14
January 27, 1910.....	Gas, Kans.....	Walnut, Iowa.....	62,020	11.9	74.09

The lawful rates were the Missouri Pacific rate of 7½ cents per 100 pounds to Omaha and South Omaha, Neb., a differential of 2 cents from Omaha and South Omaha to Council Bluffs, Iowa, and the Rock Island distance commodity rates. This combination results in rates as follows:

Destination.	Rates per 100 pounds.			
	Missouri Pacific to Omaha.	Omaha to Council Bluffs.	Rock Island tariff.	Total charges.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Lewis.....	7.5	2	4.2	13.7
Marne.....	7.5	2	3.9	13.4
Shelby.....	7.5	2	3.5	13.0
Oakland...	7.5	2	3.9	13.4
Walnut.....	7.5	2	3.8	13.3

On the basis of these rates there was an overcharge of 82 cents on one car and undercharges aggregating \$76.56 on eight other cars.

Under tariffs in effect prior to February 19, 1909, these destinations were included in the territory taking the Mississippi River commodity rate of 10 cents per 100 pounds on brick from Coffeyville, Buff City, Tyro, and Gas; but by a tariff effective on the date mentioned the joint rates between said points were canceled, leaving in force the combinations above noted. The points on the Rock Island line enjoying the Mississippi River rate are nearly all more distant from the Kansas gas belt (which includes the points of origin of these shipments) than are the destinations involved in this case.

The only towns on the Rock Island in western Iowa that do not have the Mississippi River rate on brick from the Kansas gas belt are Atlantic and points on the main line and branches west of Atlantic. The Rock Island explains that the reason these towns were not granted the 10-cent rate is that such shipments would be routed via Omaha and its line haul would be so short and its division of the joint rate so small as not to be remunerative. It is further explained that it was not intended to apply this rate to Iowa points other than those where the Rock Island would have the long haul

from Kansas City, and that this rate territory would not include points on the main line west of Valley Junction or branches diverging west of that point. However, in a tariff effective August 28, 1909, the Mississippi rate territory was extended to all points from Commerce, a sidetrack immediately west of Valley Junction, to Wiota, the next station east of Atlantic, including the Guthrie branch. Under the tariff governing the routing of shipments from the points of origin in this case, they would move to the territory last mentioned as well as those from Atlantic westward, through Omaha and South Omaha. It is stated on behalf of the Rock Island that the inclusion of the stations from Commerce to Wiota in the Mississippi River rate territory was an error; but if an error, it was not subsequently rectified.

It is true that the ton-mile earnings of the Rock Island on this traffic are small, but they are much higher than the earnings of the Missouri Pacific on its part of the haul. A witness for the Rock Island placed the average earnings on traffic that moves via Kansas City at 3 mills per ton-mile. The average earnings of that company on shipments moving to the points of destination in this case through Omaha on a 10-cent rate would be 9.09 mills per ton-mile, if the Missouri Pacific accepts as its division of the joint rate an amount not in excess of its present local rate to Omaha.

It does not appear that the conditions surrounding the transportation of brick from the Kansas gas belt to the destinations herein are so dissimilar to those involved in the transportation of the same commodity to the towns taking the Mississippi River rate as to justify the rates complained of. Upon the record we are of opinion and find that the combinations of rates on which the charges in this case were based were unreasonable to the extent that they exceeded the rate of 10 cents per 100 pounds, and reparation will be awarded on that basis in the sum of \$131.85, with interest from November 1, 1910, which amount takes into consideration the undercharges hereinbefore referred to.

We further find that the rate on brick from Buff City, Kans., to Lewis, Iowa; Tyro, Kans., to Marne and Shelby, Iowa; Coffeyville, Kans., to Oakland and Shelby, Iowa; and Gas, Kans., to Walnut, Iowa, should not in the future exceed the rate contemporaneously in effect on brick in carloads from said points of origin to points on the Chicago, Rock Island & Pacific Railway in Iowa to which the Mississippi River rate of 10 cents per 100 pounds is now applied.

An order will be issued accordingly.

No. 4084.

GEORGETOWN RAILWAY & LIGHT COMPANY
v.
NORFOLK & WESTERN RAILWAY COMPANY ET AL.

Submitted August 9, 1911. Decided December 11, 1911.

Upon the facts disclosed by the record; *Held*, That in view of the dissimilarity of circumstances and conditions surrounding the transportation of coal from the Pocahontas district in West Virginia to Georgetown, S. C., and Charleston, S. C., the existence of a rate to the former point higher than that to the latter point does not constitute undue preference of the latter point.

H. C. Case for complainant.

R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture and sale of electric current for light and power purposes at Georgetown, S. C. By petition, filed May 8, 1911, and amendment thereto, filed July 20, 1911, it alleges that it is subjected to undue prejudice and disadvantage by reason of the fact that the rate charged by defendants for the transportation of coal from the Pocahontas district in West Virginia to Georgetown is greater than that charged for the transportation of coal from the same district to Charleston, S. C., and to other more distant points. Reparation is sought.

Georgetown is a city of some 5,500 inhabitants, located on Winyah Bay, an inlet on the coast of South Carolina about 50 miles north of Charleston. It does not appear to be a regular stopping point for coastwise vessels, but water communication with Norfolk, Va., may be secured by chartering schooners or barges for the trip. Rail communication is over the line of the Georgetown & Western Railroad, which runs from Georgetown to Lane, S. C., a station on the Atlantic Coast Line 36 miles west of Georgetown. This railroad, originally built only for handling lumber, has very little traffic outside of lumber shipments and has never been a paying proposition; for a number of years it has been in the hands of a receiver.

Prior to May 15, 1911, coal was hauled from the Pocahontas district over the line of the Norfolk & Western to Petersburg, Va., and thence over the Atlantic Coast Line to Lane, the distance to Georgetown over this route being 665 miles. On May 15, 1911, the Winston-Salem Southbound Railway, a cut-off shortening the distance by 172 miles, was completed and ready to handle coal.

The rate on coal from the Pocahontas district to Georgetown had been \$2.90 per net ton since 1908. Following the opening of the Winston-Salem line and the consequent reduction in mileage, the rate to Georgetown was reduced to \$2.40, effective July 1, 1911. The rate to Charleston, S. C., is \$2.15; to Port Royal, S. C., and to Savannah, Ga., \$2.40; and to Jacksonville, Fla., \$2.75. These latter rates were not reduced by the tariff of July 1, 1911. The hauls to the four points last mentioned are longer than that to Georgetown.

Complainant contends that the maintenance of rates to Georgetown higher than the rates to the more distant points is conclusive evidence that the rate to Georgetown is unreasonable. Georgetown is not an intermediate point on the line to these more distant points, and therefore no question under the fourth section is raised. The petition alleges only that the present rate is unduly prejudicial as compared with rates to other points. Therefore the evidence went for the most part to the question of discrimination.

Complainant filed several letters quoting rates of \$1 per ton for the transportation of coal by schooners from Norfolk, Va., to Georgetown. The rate from the Pocahontas field to Norfolk on shipments destined beyond the Capes by water is \$1.40 per ton of 2,240 pounds plus a loading charge of 7 cents per ton. The rail-and-water combination via Norfolk would therefore be in the neighborhood of \$2.47 per ton of 2,240 pounds.

Defendants assert that at Charleston they have to meet not only rail-and-water competition but active rail competition from other coal fields; for instance, the Southern Railway Company's rate on coal to Charleston from the mines at Coal Creek, Tenn., and around Birmingham, Ala., was at the time of the hearing \$1.95 per ton; and defendants assert that this rate must be approximated by the Norfolk & Western and the Atlantic Coast Line in order to permit them to participate in the coal traffic to Charleston. The testimony is that for the period of one year ending April 30, 1911, the movement of coal by water to Charleston was 50,069 tons. The movement by rail to Charleston for the same period was 112,669 tons, making the total movement to that point 162,738 tons, whereas the total number of tons moved to Georgetown during the same period was 9,791 tons. Upon the evidence before us we are of opinion that on account of water and rail competition at Charleston the circumstances

and conditions surrounding the carriage of traffic to the two points are so dissimilar that the rate to Charleston is not necessarily the measure of a reasonable rate to Georgetown, and that for the same reason the existence of a higher rate to Georgetown than to Charleston is not of itself proof of undue preference of the latter point.

It follows that the complaint must be dismissed, and it will be so ordered.



No. 3829.
BEWSHER COMPANY
v.
UNION PACIFIC RAILROAD COMPANY.

Submitted May 23, 1911. Decided December 11, 1911.

Defendant's rule or practice requiring those to whom it pays money, in the course of its business, to sign a voucher therefor, the signature, when on behalf of a company or corporation, to be followed by the name of the signer with his title or relationship to said company or corporation, alleged to be unreasonable; *Held*, That the regulation in question is one that it would be the duty of the Commission to prohibit if found to be in contravention of any of the provisions of law; and *Held further*, That the regulation in question is not unreasonable. Complaint dismissed.

Edward M. Martin for complainant.

C. N. Matthai and *E. H. Crocker* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The Bewsher Company is unincorporated and is merely the business name adopted by A. H. Bewsher, its sole proprietor, who is engaged in selling grain for shippers on the market at Omaha, Nebr., and elsewhere. By petition, filed February 6, 1911, complainant attacks as unjust and unreasonable the practice of defendant relative to the form of signature required to its vouchers.

It appears that in the settlement of claims, defendant tenders to claimant vouchers in the nature of sight drafts. In the lower right-hand corner of the voucher is a form of receipt to be signed by the claimant. The following rules are prescribed by defendant as to the signature to this form:

In the case of individuals, that the individual must sign his name to the receipt either personally or by his authorized agent, and if by his authorized agent, the authority for so doing must be attached to each voucher.

In the case of a firm, that the party executing the receipt shall sign the firm's name over his own signature, also designating his connection with the firm, showing that he is authorized to receive the money and receipt therefor.

In the case of corporations, that the corporate name shall be signed to the receipt over the signature of an official, designating his official title.

During the month of December, 1909, defendant tendered complainant a voucher in payment for loss of grain in transit between Omaha and other points in the state of Nebraska. It appears from the record, however, that this grain was destined to points without the state of Nebraska after elevator service at Omaha. Complainant signed the receipt to said voucher in the form "The Bewsher Company by Bewsher" and deposited the same in the usual manner in his bank. Upon presentation defendant refused payment for the reason that the signature to the receipt in said voucher did not comply with the rules of defendant in that the signature, being in the style of a corporation, the party signing had not affixed his initials or designated his title in said company. Complainant complied with defendant's request for the initials but refused to append any title to the signature. Afterward complainant used several different forms of signature, but always refused to add a title. Defendant has persistently refused payment on the vouchers so receipted by complainant.

The petition does not present for determination a claim for loss and damage in transit. The complaint arose after defendant had allowed a claim for such loss and had presented to complainant a voucher covering the amount, which voucher defendant refuses to pay because complainant has not complied with the regulations of said defendant relative to the signing of the voucher.

In denying the jurisdiction of the Commission over a matter of this nature the defendant refers to section 15 of the act, but makes no reference to section 20. Without stopping to analyze the force and effect of those provisions in the consideration of the complaint it will suffice to say that we regard the regulation of the defendant in this behalf as one the enforcement of which it would be our duty under the act to prohibit if in any way it appeared to be an unduly burdensome requirement or to subject the complainant to any unreasonable, discriminatory, or prejudicial consequences. In other

words, we have thought such matters are within our control. But after a most careful examination of the record we fail to see that there is any element of unreasonableness in the regulation of which complaint is made or anything that subjects the petitioner to an unlawful discrimination or prejudice. On the contrary, the regulation seems to be altogether a proper one. As the complainant is the sole proprietor of the business conducted by him under the name and style of The Bewsher Company, which is unincorporated, we see no ground for regarding it as unreasonable to require him, when signing vouchers in settlement of accounts between him and the defendant, to indicate that such is his relationship to The Bewsher Company, or to use some other words reasonably explanatory of the nature of his capacity in or relation to the company as required by the defendant's rules.

.. ^ We find the complaint without merit and an order of dismissal will therefore be entered.

22 I. C. C. Rep.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted November 16, 1911. Decided December 11, 1911.

1. Considering all the facts which are now before the Commission, those developed in the second hearing as well as in the first, the Commission is of the opinion and finds that the \$1.15 rate as applied to the transportation of lemons from points in southern California to the east is unjust and unreasonable, and that it should not exceed \$1. The Commission does not base this decision upon any consideration that the American producer should be protected against foreign competition.
2. It is in the public interest that these lemons should be handled from the grove to the consumer at the lowest possible cost to the railway, and the Commission feels that under the present circumstances carriers should be allowed to require of shippers the loading of collapsible bunker cars to their capacity. The carriers will therefore be permitted to provide, by proper minima in their tariffs, that when these cars are presented with the bunkers thrown up they shall be loaded to the capacity of the car, not exceeding, however, two tiers in height.
3. What is a reasonable freight rate can not, strictly speaking, be the subject of agreement between carriers and shippers. If in a given case, after hearing all that is to be said by the parties, the Commission is clearly of the conviction that rates in effect are wrong, it is its duty to substitute for those rates others which in its opinion are right; but the Commission is not required to interfere unless clearly convinced that the present schedule is unlawful.
4. If this Commission were required to establish a reasonable schedule of rates for the transportation of citrus fruits from southern California to eastern destinations, it would not feel at liberty to put in a blanket rate; but to establish graded rates at this time upon lemons would be to break up this rate system which is highly satisfactory to all parties concerned; and while the action of the court may in the end compel the Commission to do this, it feels that it can, for the present, properly leave this situation as it is.

Asa F. Call and Cassoday, Butler, Lamb & Foster for complainants.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

F. C. Dillard, H. A. Scandrett, and C. W. Durbrow for Southern Pacific Company, Union Pacific Railroad Company, Arizona Eastern Railroad Company, and other lines.

A. L. Halstead for San Pedro, Los Angeles & Salt Lake Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

During a portion of the years 1902 and 1903 the defendants maintained a blanket rate on lemons from Southern California to most territory east of the Rocky Mountains of \$1 per 100 pounds, and beginning with 1904 that rate was made applicable for the entire year. In November, 1909, this rate was advanced to \$1.15.

In 1902 the corresponding rate on oranges was \$1.25, but this was voluntarily reduced by the carriers in 1907 to \$1.15, at which figure it was maintained during the year 1909.

In 1905 this Commission held, as the result of an elaborate investigation, that the rate on oranges ought not to exceed \$1.10, but inasmuch as the Commission at that time had no authority to prescribe a reasonable rate for the future this rate was never established.

Upon the advance of the lemon rate, as above stated, California growers began proceedings attacking both rates as unreasonable, and asking that the same be materially reduced. After careful investigation the Commission reached the conclusion that while in its opinion the rate of \$1.15 upon oranges was a liberal one, it ought not at the present time to be disturbed. It did hold that the lemon rate ought not to exceed \$1, and so ordered. 19 I. C. C. Rep., 148.

From this order the carriers appealed to the Commerce Court and that court enjoined the order for reasons stated in its opinion of October 5, 1911. *A., T. & S. F. Ry. Co. v. U. S.*, 190 Fed. Rep., 591.

Thereupon this Commission struck off its former order and set the case down for further hearing with a view to making such new order as might be required in the premises. All parties have been heard both in evidence and upon argument, and the case is now before us for a final disposition.

The ground upon which the Commerce Court enjoined the enforcement of our order, as stated in its opinion, was that the Commission in establishing a rate of \$1 on lemons was not attempting to determine what would be a just and reasonable rate of transportation, but was rather endeavoring to protect California lemon growers against Sicilian competition. Its reason for reaching this conclusion was because:

An examination of the report of the Commission, reproduced so far as it bears on the lemon rate, in its entirety, demonstrates that except for two brief paragraphs suggesting grounds for lowering the lemon while maintaining the orange rate, it deals entirely with matters tending to show the need in this industry of a high-protective tariff against Sicily and, not on traffic considerations, but to compensate for the tariff insufficiencies, a low transportation rate especially to eastern territory.

The complainants, in making out their case, relied in part upon the fact that for parts of two years and for the entire preceding six years these defendants had voluntarily maintained a rate of \$1, and this, certainly, was a strong admission against the carriers, unless explained. The carriers attempted to explain it by stating that the rate of \$1 had been established, not as a reasonable rate, but to enable California producers to meet the competition of Sicily. Thereupon the complainants replied that notwithstanding the additional duty, owing to increased cost of production in California, Sicilian competition under the advanced duty was as strong as it ever had been under the old duty, so that whatever rate had been reasonable for the past eight years was still reasonable.

The Commission in its opinion did not attempt to indicate the grounds upon which it based its judgment in any particular. It simply stated, in the briefest possible manner, the issues of fact made before it and the claims of the contending parties. We did not suppose that we had any authority to correct tariff insufficiencies by the freight rate, nor to protect, in that way, the American against the foreign grower, nor did we attempt to do so; the fact that this rate had for eight years been voluntarily maintained by the defendants was before us, together with whatever either party desired to say in relation to that circumstance.

Had we understood that the Commerce Court would attempt to look into the mind of the Commission for the purpose of ascertaining the reasons upon which its order was based; that the mere statement of the claims of the parties was to be taken as evidence of the assent of the Commission to those claims; and that the number of lines used in stating the issue was to indicate the weight attached by us to that particular consideration, we should have been more careful in the phrasing of our opinion. In this case the court reproduces in the margin of its opinion what the Commission said touching the lemon rate, but it refrains from reproducing what had gone before in the same opinion touching the orange rate. The Commission had already stated at considerable length the various elements entering into a determination of the reasonableness of the rate on oranges. In the main, the transportation conditions under which oranges and lemons move from Southern California to eastern markets are identical, and whatever had been said as to oranges applied as to lemons. It only remained to note those points in which the parties claimed that the two articles differed. As showing this difference, the complainants pointed to the fact that for the better part of eight years the defendants had of their own free will maintained a rate on lemons, at first 25 cents, and subsequently 15 cents lower than that contemporaneously in effect upon oranges. Upon this point volumi-

nous testimony was given by both parties, and the Commission simply stated that issue in as brief terms as possible.

The Commission also mentioned two other reasons advanced by the complainants why a lower rate might properly be maintained upon lemons than upon oranges. No attempt was made in the original opinion to amplify any of these reasons, but it seems proper to refer to them somewhat more in detail here in the light of what has since transpired.

The first of these, and that one probably entitled to the greatest consideration, was the fact that the average haul upon the lemon was materially shorter than the average haul upon the orange. The rates in question were blanket rates, applying to all territory east of the Rocky Mountains, except the southeast. Manifestly, in passing upon the reasonableness of a rate to this wide territory we must consider it as a whole; that is to say, we must consider the average haul. Now, the testimony tended to show that, owing to the fact that the lemons consumed upon the Atlantic seaboard, and even as far west as Chicago, were to a considerable extent imported, while this was not true in case of oranges, the average haul upon the lemon was much shorter than upon the orange, and that, therefore, the cost of the service to these carriers was materially less in case of the average movement of lemons than of oranges.

It was said upon the former hearing that this difference in distance was 500 miles. The testimony of the complainants upon the last hearing tends to show that it is approximately 450 miles. The evidence of the Santa Fe Railway Company tends to show that comparing the average haul on all oranges and lemons handled by that company during the season of 1910-11, the average haul was only slightly over 300 miles greater in case of oranges than in case of lemons.

It appeared in the former case that the average haul on oranges was not far from 2,300 miles. A rate of \$1.15 per 100 pounds would yield ton-mile earnings of 1 cent on the average; 15 cents per 100 pounds is 1 cent per ton-mile for 300 miles. If, therefore, the average haul upon lemons was 300 miles less than the average haul upon oranges, and we had reduced the rate in proportion, the resulting rate for the lemon would have been \$1.

It is perfectly true, as stated by the Commerce Court, that ordinarily, in case of long distances, the rate does not increase with the distance, but it would not be an extravagant difference, although perhaps more than we should make, if in establishing graded rates upon this commodity we were to allow 15 cents per 100 pounds for a haul of 500 miles.

The second transportation difference pointed out by the Commission in its previous report was that a much larger percentage of

oranges moved under refrigeration than of lemons. It appears from the testimony introduced upon the last hearing that 14 per cent of all lemons, as compared with about 50 per cent of all oranges, were refrigerated during the season of 1910-11.

It is well understood that refrigeration is not ordinarily furnished by the transportation company, but by a separate refrigeration company, which retains the entire charge for the service. The carrier itself receives no more, if the rate is the same, when the commodity moves under refrigeration than when it moves without, although it does haul a certain additional weight of ice. In justifying charges made for the transportation of articles sometimes moved under refrigeration and sometimes not, carriers have uniformly insisted that the Commission should consider the fact that with respect to a portion of the transportation service an additional weight of ice was carried. These same transcontinental defendants have repeatedly urged upon this Commission, and did most earnestly insist in the present case, in justification of their rate of \$1.15, that in the movement of approximately one-half of this citrus-fruit crop an additional weight of ice must be transported. In this view the complainants apparently concurred, and the Commission adopted it.

This was probably error. When we later came to examine in this very case the reasonableness of the refrigeration charge we reached the conclusion that, whatever the parties might say, we must treat the additional cost of hauling the ice as an additional refrigeration expense, to be charged, not against the entire movement from California, but only against that part of the movement under refrigeration. We held that there was no ground upon which the shipper who shipped under ventilation could be required to help pay the transportation charge of the shipper who required refrigeration. *Arlington Heights Fruit Exchange v. So. Pac. Co.*, 20 I. C. C. Rep., 106.

Considering this matter in the light in which it was presented to us by both parties, and in which it was disposed of in the former case, the fact that a much larger per cent of oranges move under refrigeration than of lemons would justify a somewhat lower rate upon lemons than upon oranges. If the matter is to be considered in the light of our subsequent holding, it must follow that in fixing the rate upon oranges we have taken account of an element in favor of the carriers which ought not to have entered into our conclusion, and that therefore the rate of \$1.15 is somewhat too high. If this lemon rate is to be measured by the orange rate, then we think that the orange rate should be reduced in determining a fair relationship, not that the lemon rate should be advanced.

And we desire to call attention to the fact, upon that aspect of the case, that in our opinion the rate of \$1.15 applied to the movement of oranges is an extremely liberal one. This Commission held in 1905

that this rate should not exceed \$1.10. The production of these citrus fruits in California is almost twice to-day what it was at that time, which makes for a lower rather than for a higher rate.

Considering all the facts which are now before us, those developed in the second hearing as well as in the first, we are of the opinion and find that the \$1.15 rate as applied to the transportation of lemons is unjust and unreasonable, and that it should not exceed \$1. We do not base this decision upon any consideration that the American producer should be protected against foreign competition.

The Commission in its previous report called attention to the fact that the refrigerator cars in which these lemons are moved may be so constructed that the bunkers which contain the ice can be thrown into the upper part of the car, thereby leaving available for loading, when under ventilation, the space occupied by the bunker when the movement is under refrigeration. At the time of the former hearing it was said that about 1,000 of these collapsible bunker cars were in service, but that others were in process of construction. It appeared upon the last hearing that of the 18,000 cars used in the citrus-fruit traffic about 5,500 were then provided with this style of bunker. The Santa Fe, which handles fully 50 per cent of this traffic, uses 6,500 cars, of which 2,500 have the collapsible bunker.

It further appeared upon the last hearing that the lemon is less subject to decay in transportation than the orange. Experiments made with these collapsible bunker cars indicate that the ventilation obtained with that style of equipment is not as good as with the standard refrigerator car, and shippers, so far as we are at present advised, object to loading oranges in such cars when the bunkers are up, for the reason that the fruit does not carry equally well. But since the lemon is not as susceptible to decay as the orange, the complainants, representing 90 per cent of the lemon growers of California, state that they are willing to load these collapsible bunker cars to their full capacity with lemons, if presented for loading with the bunkers thrown up.

Such a car, of standard length, can be loaded with 34,000 pounds of lemons. The present minimum is 26,200 pounds; in case of oranges, 26,700 pounds. A car loaded to the minimum with lemons at a rate of \$1.15 produces a car revenue of \$301.30, while if loaded to a minimum of 34,000 pounds the earnings upon that same car, at a rate of \$1, would be \$340. There can be little doubt that from a purely transportation standpoint, having reference mainly to the cost of the service, a \$1 rate with a minimum of 34,000 pounds is better business than a minimum of 26,200 pounds at a rate of \$1.15.

It is in the public interest that these lemons should be transported at the lowest possible cost to the railway, and we feel that under the present circumstances carriers should be allowed to require of ship-

pers the loading of these collapsible bunker cars to their capacity. The carriers will therefore be permitted to provide, by proper minima in their tariffs, that when these cars are presented with the bunkers thrown up they shall be loaded to the capacity of the car, not exceeding, however, two tiers in height. We do not base our opinion that \$1 is a reasonable rate upon the fact that a minimum of 34,000 pounds can often and perhaps usually be carried, but we do think that, considering the whole situation, it is reasonable that the shipper should be required to load this minimum, when, without damage to himself, he can do so.

This Commission prescribed by its order, which the Commerce Court enjoined, a blanket rate extending from the Rocky Mountains east, and one ground of attack upon our order was that the Commission was without authority to establish a blanket of that extent.

The carriers themselves had voluntarily established, and for years maintained this blanket rate, which is applied to most of the products of California. They expressed the opinion upon the hearing that this was, upon the whole, the most satisfactory rate to them. The shippers concurred in this idea, so that we were virtually requested by both the railroad and the shipper to establish a rate of that kind. The question presented to us was not, What would be a reasonable rate if the Commission were for the first time establishing such rates, but, rather, is \$1.15, or \$1, or some other figure reasonable as a blanket rate? It was in that aspect of the case that we prescribed the \$1 blanket rate.

The courts might perhaps have held that the carriers, having tendered a rate of this kind, were estopped from contesting it upon the ground that the Commission had acted upon the rate presented and had prescribed the kind of rate which all parties asked for, but we did not believe that we were invested with authority to fix a blanket rate of this dimension, since that was really a question of public policy for Congress, and we did not care to go before the courts or the country in that light. For this reason the Commission struck off its order and took the matter under further advisement.

Upon the recent hearing carriers were asked whether it was their desire that the Commission should establish reasonable graded rates or should establish what in its opinion was a reasonable blanket rate. They requested the establishment of a blanket rate, and in that request the complainants joined. While the carriers did not in any way agree not to contest the order of the Commission upon other grounds, they did state that it would not be contested upon the ground that the establishment of so wide a blanket was beyond the jurisdiction of the Commission.

What is a reasonable freight rate can not, strictly speaking, be the subject of agreement between carriers and shippers, nor between carriers and this Commission. If in a given case, after hearing all that is to be said by the parties, we are clearly of the conviction that rates in effect are wrong, it is our duty to substitute for those rates others which we believe to be right. But we are not required to interfere unless clearly convinced that the present schedule is unlawful.

When the United States Government transports a package 10 miles for one citizen for 10 cents, while it charges his neighbor the same amount for transporting a like parcel 3,000 miles, a clear discrimination is made, but it is a discrimination of that character which by universal consent is in the public interest. So, here, it is by no means certain that these postage-stamp rates as applied to the distribution of the products of the Pacific coast states are not upon the whole for the general public good. Under this system the producers upon the Pacific coast are given the widest possible market for their products; the carriers obtain a certain amount of long-distance business at remunerative rates, which they would not otherwise have; the freight rate does not so far enter into the cost of these articles to the consumer that any noticeable burden is imposed upon any section of the country. If this Commission were required to establish a reasonable schedule of rates for the transportation of citrus fruits from southern California to eastern destinations, we should not feel at liberty to put in this blanket; but to establish graded rates at this time upon lemons would be to break up this rate system which is highly satisfactory to all parties concerned, and while the action of the court may in the end compel us to do this, we feel that we can, for the present, properly leave this situation as it is.

The complaint prays for reparation, which will be awarded upon the basis of the \$1 rate established, all questions as to the parties who may recover such damages and the time within which they can be awarded being reserved for further consideration.

An order will be issued.

LANE, Commissioner, concurring:

The act to regulate commerce provides that if we find the rates made by the railroads to be unjust and unreasonable we shall have power to fix just and reasonable rates. It also declares that there shall be no advantage or preference given to any locality. We are called upon in this case to pass upon the reasonableness of a rate on lemons that is the same from Los Angeles to Denver as from Los Angeles to Boston. Manifestly if there is any direct relation between cost of service and the rate charged such method of making rates is in conflict with the law. These great blankets, however, are

made as a matter of policy; they are instituted by the carriers for their own benefit, to develop the industry and to extend and simplify the marketing of the fruit. Such a blanket is a benefit to the railroads, because, as is fairly established in this case, the \$1 rate is higher than is just and reasonable on a very considerable percentage—perhaps from 50 to 70 per cent—of the fruit which ends its journey to the west of the point to which a \$1 rate would carry it. The shippers object to the breaking up of this blanket, because to do so would be an inconvenience to them, and as the rate is paid by the consignee and does not come out of the consignor's pocket, excepting in competitive territory in the east, they are indifferent as to the amount of the rate in and of itself excepting as it so increases the price of lemons that demand will decrease. The result of this mutuality of interest is a blanket rate which imposes on the consignees in some parts of the country a higher rate than would be charged under a scheme of graded rates, in order that a lower rate than otherwise would be reasonable may be made into a small section of the country which is intensely competitive. Now, this may be good policy. I am not prepared to say that it is not, and therefore concur in the opinion of the Commission.

This case, when broadly regarded, involves a question of the highest national importance. What is to be our policy with respect to the movement of traffic? Shall the country be treated as a whole for commercial purposes, or shall it be infinitely divided? In our postal service we deal with the country as a unit. As to our railroads there is no uniform policy, even upon the same lines or systems. In some parts of the country rates are on an almost strictly mileage basis, every 10 miles that is passed adding to the rate. In other territory we have a system of small zones or groups which are placed upon a common basis—a scheme of rate making that has worked most happily in the country to the east of the Mississippi River and which, it seems to me, should be extended westward. The whole continent for a zone of 2,000 miles is made to serve the Pacific coast terminal cities at uniform rates, while the states between the mountains are not given such advantage. So, too, on California products generally, and not alone upon citrus fruits, the United States east of the Rockies is placed in a great zone to which a uniform rate is made. At the same time, the lumber of the far northwest is not so treated, nor the wool or hides of the interior.

Perhaps the United States will one day declare a policy of its own in this regard. Primarily it is a matter of national concern and not of railroad policy as to what system of rate making shall obtain so long as the carriers receive a reasonable return upon the value of their property. The people may say (1) that railroad rates shall

be made so as to carry all products into all markets within the four lines of the country; or (2) that after a certain narrow limit is passed the whole of the land shall be one zone; or (3) a system of rates that will keep producers and consumers as near together as possible and eliminate waste in transportation. These are national questions. They go to the very future of our industrial life. Upon their determination depends the character of the farm products and the nature of the industries in the various sections of the country. The railroad by its rates may make each portion of the country largely independent of the remainder or it may make of the Nation one economic and industrial unit, each portion thereof doing best what nature has fitted it to do best. This is fundamentally the difference in the philosophy which underlies the two methods of making rates which have been given consideration in this case. Without any expression of policy from Congress we accept the policy which the railroads themselves have made, considering that upon the whole the results arising from such policy do not conflict with the provisions of the law. There is no doubt in my mind but that the Commission could not itself prescribe a blanket similar to that obtaining here and which we are approving because neither the carriers nor the shippers wish it destroyed.

I am authorized to say that Commissioner MEYER concurs in the view herein expressed.

CLARK, *Commissioner*, concurring in part:

I am unable to agree in full with the conclusions of the majority in this case. It appears on further hearing that the average haul performed on the lemons is more nearly that performed on the oranges than appeared in the former hearing, and while I think that is a feature to be given consideration, it does not seem to me to be controlling, for the reason that the blanket rate on the lemons covers the same territory covered by the blanket rate on the oranges, and the shippers have the same privileges thereunder. It appears that the California lemons command a higher price in New York than do the imported lemons. If, therefore, the lemons are hauled shorter distances than the oranges, it is because the shippers so elect.

It seems to me clear that it would be greatly to the disadvantage of the citrus-fruit growers and shippers if the blanket rate were broken up. The blanket rate, together with the extremely liberal re-consignment privileges granted thereunder, has contributed greatly to the development of the citrus-fruit industry in California. It is admitted that under present transportation conditions the California growers have driven the foreign oranges from the markets of the United States.

It appears that the reconsignment privilege is exercised on about 50 per cent of the shipments of citrus fruits, and that as to some carloads the privilege is availed of four or five times. Every reconsignment costs the carrier something in extra services and in readjustment of accounts, and the reconsignment privileges under these citrus-fruit blanket rates are probably more liberal than are or ever have been accorded in connection with any other traffic.

I am unable to discover any substantial transportation difference between the movement of oranges and of lemons except that the lemons stand transportation better than the oranges do and are therefore shipped to a larger extent under ventilation, and apparently can be loaded to a heavier carload minimum.

In several cases the Commission has, and I think properly, approved higher rates upon perishable commodities shipped under refrigeration than upon the same commodities shipped under ventilation. *Florida Fruit and Vegetable Asso. v. A. C. L. R. R. Co.*, 17 I. C. C. Rep., 552; *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.*, 16 I. C. C. Rep., 106. It has uniformly appeared that it is not practicable or possible to load as heavily under refrigeration as under ventilation, and, necessarily, care of shipments under refrigeration, reicing, etc., involve additional expenses to the carriers.

Maximum loading is clearly in the interest of economy, and a substantially increased minimum weight justifies a lower rate. I therefore agree with the finding as to the rate on the minimum of 34,000 pounds under ventilation.

22 I. C. C. Rep.

No. 4262.

IN THE MATTER OF THE INVESTIGATION OF ALLEGED UNREASONABLE RATES AND PRACTICES INVOLVED IN THE TRANSPORTATION OF LIVE STOCK, PACKING-HOUSE PRODUCTS, AND FRESH MEATS FROM VARIOUS SOUTHWESTERN POINTS TO PACKING HOUSES, AND FROM THENCE TO VARIOUS DESTINATIONS.

INVESTIGATION AND SUSPENSION DOCKET No. 31.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF CERTAIN INCREASES IN RATES FOR TRANSPORTATION OF CATTLE TO OKLAHOMA CITY, OKLA.

INVESTIGATION AND SUSPENSION DOCKET No. 36.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN CLASS AND COMMODITY RATES BETWEEN STATIONS IN OKLAHOMA AND TEXAS.

INVESTIGATION AND SUSPENSION DOCKET No. 56.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF PACKING-HOUSE PRODUCTS.

No. 4004.

CORPORATION COMMISSION OF OKLAHOMA

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 8, 1911. Decided December 11, 1911.

Upon consideration of the facts and circumstances disclosed by the record in this case.
Held.

1. That defendants' present rates upon live stock from points in New Mexico, Texas, and Oklahoma to Fort Worth, Tex., Oklahoma City, Okla., and Wichita, Kans., are unreasonable to the extent that they exceed the rates prescribed in this report.

2. That defendants' present rates upon fresh meat and packing-house products from Fort Worth, Oklahoma City, and Wichita to various points are unreasonable to the extent that they exceed the rates prescribed in this report.
3. That as the record contains nothing which indicates clearly the points to which the rates on tankage are desired, nor the nature of the complaint against the rates now in effect, no opinion upon that point is at this time expressed.
4. That, for reasons expressed in the report, no opinion is given upon the rates on hides involved in this case.
5. That defendants' present rate on salt from the Kansas field to Oklahoma City is unreasonable to the extent that it exceeds the rate prescribed in this report.

George A. Henshaw and *C. B. Bee* for Corporation Commission of Oklahoma.

J. H. Johnston for Traffic Association of Commercial Club of Oklahoma City.

Walter E. McCornack for Sulzberger Sons Company.

Luther M. Walter and *A. W. McLaren* for Morris & Company.

E. F. Bisbee for Oklahoma Stock Yards Company.

James C. Jeffery for Fort Worth Stock Yards Company.

Alfred R. Union for Armour & Company.

Albert H. and Henry Veeder and *L. E. Hale* for Swift & Company.

Cassoday, Butler, Lamb & Foster for Cudahy Packing Company, Dold Packing Company, Wichita Transportation Bureau, Public Utilities Commission of Kansas, and Wichita Union Stock Yards.

John Marshall for Public Utilities Commission of Kansas.

C. H. Brooks for Union Stock Yards of Wichita.

Martin Casto for Wichita Transportation Bureau.

S. H. Cowan for Texas Cattle Raisers' Association and American National Live Stock Association.

H. C. Wilson for Commercial Transportation Bureau of Kansas City.

W. H. Weeks for Kansas City Live Stock Exchange.

A. F. Stryker for South Omaha Live Stock Exchange.

Theodore Brent and *Ralph M. Shaw* for Union Stock Yard & Transit Company of Chicago.

H. G. Krake for St. Joseph Commercial Club.

M. F. Blanchard for St. Joseph Live Stock Exchange.

J. L. Coleman, R. J. Merrick, D. L. Meyers, and *James Peabody* for Atchison, Topeka & Santa Fe Railway Company.

S. H. Johnson and *W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; Trinity & Brazos Valley Railway Company; and El Paso & Southwestern Railroad Company.

W. B. Biddle, J. A. Middleton, E. K. Voorhees, and *Fred H. Wood* for Frisco Lines.

Martin L. Clardy, H. G. Herbel, and *B. M. Flippin* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

H. L. Redfield for Texas & Pacific Railway Company.

W. W. Miller and *C. S. Burg* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

E. H. Shaufler, *W. H. Cloud*, and *J. J. Lane* for Kansas City, Mexico & Orient Railway Company.

M. A. Spoons and *W. F. Sterley* for Colorado Southern Railway Company; Fort Worth & Denver City Railway Company; and Wichita Valley Railway Company.

Edwin A. Austin for Charles Wolff Packing Company of Topeka.

F. C. Dillard and *H. A. Scandrett* for Houston & Texas Central Railroad Company and Southern Pacific Lines.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Some five years ago extensive packing houses were established by Armour & Company and Swift & Company at Fort Worth, Tex., which have since been and now are in operation. The live stock slaughtered at these houses is drawn from the southwest, and the purpose in locating at that point seems to have been to bring the packing house nearer to the source of supply.

More recently, similar establishments have been erected by Morris & Company and Sulzberger & Sons Company, at Oklahoma City. These establishments are also extensive and in every respect modern. They transact the same business and draw their live stock from substantially the same source as the packing houses previously erected at Fort Worth.

There are also packing houses located at Wichita, Kans., which operate in competition with those at Fort Worth and Oklahoma City. The Public Utilities Commission of Kansas, the Dold Packing Company, the Cudahy Packing Company, and the Wichita Union Stock Yards have intervened in these proceedings to protect the interests of the packers at that point.

As the time approached when the packing houses of Oklahoma City were to begin operations controversies arose as to the relation in rates both upon live stock into and upon the product out of these competing points. Under the influence of the demands of these packers the railroads made certain changes in their tariffs, some of which involved an advance both in the live stock and in the products rate.

In I. & S. No. 31, in I. & S. No. 36, and, again, in I. & S. No. 56, the Commission suspended certain of these advanced rates. No. 4004 is a complaint brought by the Corporation Commission of Oklahoma attacking all rates on live stock into and all rates on packing-house products out of Oklahoma City.

It became evident that practically all the rates governing the movement of live stock into these slaughtering points and the various products out were involved, and carriers and shippers united in a request that the Commission would undertake a general investigation of this entire subject. In compliance with this request and because we were satisfied from the complaints received that such a proceeding ought to be undertaken, the order in No. 4262 was entered. This contemplates a comprehensive investigation into the whole subject, looking to the possible making of an order if the present rates are found to be unlawful. The rates involved in this proceeding are:

1. Rates upon live stock, both relative and absolute, into, out of, and through Fort Worth, Oklahoma City, and Wichita, as compared with similar rates to Kansas City and other packing houses upon the Missouri River and east.

2. Rates on fresh meats and packing-house products from Fort Worth, Oklahoma City, and Wichita to all markets of consumption.

3. Rates on hides, tankage, fertilizer material, and other products of the packing house to points of consumption.

4. The rate on salt from the Kansas field to Oklahoma City.

The freight rate is of great importance to these packers, and this is true both of the rate in and that out. It must be apparent that where the raw material is drawn from the same section, as is to a considerable extent the case here, if the rate upon the live animal to the slaughtering house, added to the rate upon the product to the consuming market, is less in case of one locality than another, the more favorable rate is an advantage.

We have been urged by certain of the parties in interest to this proceeding to so adjust these rates that the combined in and out transportation charges at the different localities would be equal. This basis of adjustment can not be accepted. These packing houses have been voluntarily located at the points where they are. If in fact that location is such that the haul upon the live animal is longer in one case, while the haul upon the manufactured product is no less, then that packing house rests under a natural disability which ought not to be equalized in the rate.

While commercial and industrial conditions often enter into the determination of a reasonable transportation charge, it is no part of our duty to so adjust rates that business will or will not be done at a particular point, and that is especially true of a case like this, where no natural advantage is possessed by any locality.

Each one of these rival packing houses is entitled to a reasonable rate upon the live animal from various points of production, and those rates should be fairly related one to another. Each packing house is also entitled to a reasonable rate upon its product to various markets of consumption, and these rates, again, should be fairly

adjusted with reference to one another. Any locality which remains at a disadvantage after this has been done must sustain that burden, which is due to its location with respect to this business.

We will first consider the rate upon the live animal to the packing house.

The three points involved are Fort Worth, Oklahoma City, and Wichita, located in three different states. A considerable part of the live stock slaughtered at each one of these packing houses originates in the state where the packing house is situated and moves into the point of slaughter upon a state rate. In all three instances these state rates are under the control of state commissions and are in no respect subject to the control of this Commission.

In the case of Fort Worth the bulk of the beef cattle slaughtered are found in Texas, and these move upon a rate fixed by the Texas commission. The packing house at Oklahoma City also draws its supply of beef cattle very largely from Texas, and here the movement is upon an interstate rate. In fixing the interstate rate for Oklahoma City we can not be governed by the state tariff unless in our opinion it is just and reasonable. It appears upon examination that the state rates differ in Texas, Oklahoma, and Kansas, so that if this Commission were disposed to do so it would be impossible to establish a scale of rates which should insure an interstate movement upon the same terms with the state movement. We must therefore prescribe rates which commend themselves to us, upon the whole, as reasonable, even though, as a result, one locality obtains the advantage over another upon the rate at which its supplies of live stock move in.

In *Cattle Raisers Asso. of Tex. v. M., K. & T. Ry. Co.*, 11 I. C. C. Rep., 296, certain rates upon beef cattle from these southwestern points of origin to Kansas City, St. Louis, and other markets beyond were approved by the Commission. That proceeding attacked three advances in rates, of which the Commission sanctioned the first two and condemned the last.

It appeared in that case that this territory had long been divided into groups for the purpose of naming cattle rates to these markets of consumption. The case did not in any way question the propriety of these groupings, and that point was in no sense either considered or passed upon by the Commission. We simply held that the last advance was unjustifiable and ordered in the rates voluntarily established by the carriers previous to that advance.

Oklahoma City and Wichita both draw their supplies largely from the same source as Kansas City, and slaughter in competition with that locality. If possible, the rates upon live stock into these markets ought to bear a certain relation to those from the same points of origin to Kansas City.

It was suggested upon the hearing that rates from the more distant points to Oklahoma City and Wichita should be made less than corresponding rates to Kansas City by a fixed arbitrary, and this suggestion seemed to meet with general approval. An earnest attempt has been made to prescribe these rates upon that basis, but without success.

Live stock originating in the eastern part of Texas reaches Kansas City largely through Fort Worth or through some junction east of Fort Worth. With respect to all such traffic, Oklahoma City and Wichita both involve an out-of-line haul, the distance from Fort Worth to Kansas City via Wichita being nearly one-fifth greater than that by the short line.

With respect to territory in western Texas this is not true. The Orient system has already constructed and put in operation a line of railroad from Kansas City through Wichita as far as Big Lake, Tex., and is now continuing this to Alpine, Tex. The completion of that line makes the short route with respect to all points upon it and many points west of it to Kansas City through Wichita. In case of considerable territory the short line to St. Louis is through Oklahoma City.

It is evident, therefore, that the same arbitrary could not be properly applied to all parts of Texas, and an attempt to determine what would be a proper arbitrary for different portions of the state shows that none can be found which will work out in a satisfactory manner.

After a careful examination of this whole situation we have become convinced that the fairest way to all parties concerned will be to establish a mileage scale for the movement of live stock from points in New Mexico, Texas, and Oklahoma into these three markets, namely, Wichita, Oklahoma City, and Fort Worth. The same rates would, of course, apply to the interstate movement of live stock between all points in those states. The scale, which in our opinion is reasonable, does not differ greatly from the present Texas scale, so that Fort Worth, which uses that scale mainly in the transportation of its cattle, will stand upon a substantial parity with its two rivals. It will be found that in some instances this scale is higher and in some instances lower than present rates from points of origin to Kansas City, but, on the whole, it accords fairly well with those rates, and will put the three markets under consideration upon a fair basis, on the average, with Kansas City and St. Louis.

We have been asked to establish joint rates between different carriers to these markets, and the proceedings before us are broad enough to lay the foundation for an order of that kind. Considerable has also been said as to what joint rates should be and what should not be established.

We shall not at this time undertake to designate any through route or joint rate. In our opinion the rate for a two-line haul may prop-

erly exceed that prescribed for a one-line haul, in case of live stock, by 2½ cents per 100 pounds. If carriers decline to establish joint rates upon that basis, any party interested may apply by supplementary petition in this proceeding, whereupon the matter will be further examined and the through route and joint rate in terms established if that seems proper.

We are of the opinion and find that the rates specified in the table at the end of this opinion, in cents per 100 pounds, in connection with the minima named, are reasonable and just to be applied to the carload movement of live stock, and that rates now in effect, in so far as they exceed the rates so named, are unjust and unreasonable.

We come now to rates upon the products of these packing houses, and this consideration divides itself into two heads—first, local rates for the home market, and, second, proportional rates for more distant markets.

The local market for fresh meat and packing-house products, especially packing-house products, is already an important one, and is every day becoming more so. The packing houses located at each of these points distribute considerable quantities of their output for consumption in nearby territory, in which they actively compete with each other.

It was apparently assumed by all parties upon the hearing that the only fair way of fixing these local rates upon the product was to establish a mileage scale, thereby giving to each locality the exact benefit of its location. Upon reflection we concur in this opinion, holding that such mileage scale should be applied between all points in New Mexico, Texas, Oklahoma, Arkansas, Missouri south of the Missouri River, and Louisiana west of the Mississippi River and also from Wichita to points in that territory. We are of the opinion and find that the carload rates upon fresh meat and packing-house products contained in the table at the end of this opinion, with the minima there given, are just and reasonable maximum rates to be observed for the future in the territory above defined, and that the present rates are unreasonable to the extent by which they exceed those named.

This Commission has at different times reached varying conclusions as to the relation which should exist between rates upon the live animal and the product. The relation established in this case does not accord with that heretofore suggested by this body in other cases.

Live stock has always been an important production of the section under consideration, and the rates upon that commodity to slaughtering markets, moving as it does in very large quantities, have probably been maintained at a somewhat lower level with respect to other rates than obtains in many sections of the country where the movement of live stock is much less and the general density of traffic much greater. Upon the other hand, the tendency has been to maintain somewhat higher relative rates upon fresh meat and

packing-house products in this section than in other portions of the country where traffic is heavier and the general level of rates lower.

If, now, in fixing these rates under consideration we were to advance the live-stock rates, the result would be to throw these slaughtering points out of line with other competing localities which draw their supplies from this same territory. If, upon the other hand, we were to reduce rates upon the product for the purpose of establishing a given relation with the live animal, we should deprive the carrier of revenue to which it is entitled. Since there appears to be no competitive necessity in this section and in the case of these local rates for establishing any such relation, we have not been much influenced by that aspect of the matter. Attention is called to this here to prevent any assumption that this table of rates expresses the final opinion of this body as to what the relation should be between the rate upon the live animal and the product. These rates apply only to this territory, and are made in view of the situation as we find it.

We were asked to prescribe a less-than-carload rate upon fresh meat and packing-house products. Apparently, fresh meat must move under refrigeration, and can only move by freight in carloads. Packing-house products might be distributed from the packing house in less-than-carload lots, but this case contains no statement of the extent to which such a rate would be used. We shall fix, at this time, no less-than-carload rates, but if the establishment of such rates is a matter of consequence interested parties may present that question by supplemental petition in this same proceeding.

Much the greater part of the output of these different packing houses finds a market at distant points, and it is in the adjustment of these rates that the greatest difficulty arises.

It is inferable from the testimony that considerable shipments are made to western markets, but no serious complaint was suggested upon the hearing with respect to rates to such points of destination. The main controversy was over eastern markets and to this our attention at the present time will be confined.

The markets with respect to which the controversy is most active may be roughly thrown into four divisions:

1. The southeast, embracing Alabama, Georgia, and Florida.
2. Carolina territory, including the two Carolinas and the southern portion of Virginia.
3. Territory north of the Potomac and Ohio rivers and east of the Illinois-Indiana state line, including the Virginia cities. While this embraces a considerable portion of central freight association territory, it is here designated as trunk line territory.
4. Territory lying between the Illinois-Indiana state line and the Mississippi River, which may be here designated as Illinois territory, although the region to the north of that state is also included.

At the present time rates to the first three territorial divisions above named are constructed upon St. Louis and the lower Mississippi River crossings; that is to say, the rate is made by adding together a proportional rate from the packing house to the Mississippi River, and another rate from the Mississippi River to the destination. So far as this testimony discloses, the rate from the Mississippi River crossing to a given destination is the same irrespective of the point at which the traffic originates, and from this it follows that the amount of the through charge is determined by the proportional rate from the packing house to the Mississippi River crossing. It was conceded by all parties upon the hearing that rates to these different markets should be acted upon in this proceeding by establishing proportional rates bearing the proper relation to one another from these three slaughtering points to these Mississippi River crossings, without reference to what the rate might be from the crossing to the destination, and the case will be so treated and disposed of by us.

These rates are now as follows:

Proportional rates on fresh meat and packing-house products.

From—	To—							
	St. Louis.		Memphis.		Vicksburg.		New Orleans.	
	Fresh meats.	Pack-ing-house prod-ucts.	Fresh meats.	Pack-ing-house prod-ucts.	Fresh meats.	Pack-ing-house prod-ucts.	Fresh meats.	Pack-ing-house prod-ucts.
Fort Worth:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Trunk line.....	35½	32½	.....	.....	.....	.....	.....	.....
Southeast.....	.....	.....	26	21	26	21	26	21
Carolina.....	.....	.....	24	19	24	19	24	19
Oklahoma City:	.....	.....	.....	.....	.....	.....	.....	.....
Trunk line.....	31½	26½	.....	.....	.....	.....	.....	.....
Southeast.....	.....	.....	26	21	26	21	.....	.....
Carolina.....	.....	.....	24	19	24	19	.....	.....
Wichita:	.....	.....	.....	.....	.....	.....	.....	.....
Trunk line.....	24½	24½	.....	.....	.....	.....	.....	.....
Southeast.....	.....	.....	27½	22½	.....	.....	.....	.....
Carolina.....	.....	.....	26½	20½	.....	.....	.....	.....

The parties were also inclined to agree that in determining relative rates from these three points to the above disputed territories, distances up to the Mississippi River should be considered as fairly indicating proper differences in the rates.

When long distances are under consideration, like those before us, it often and perhaps usually happens that a considerable difference in mileage may be disregarded in fixing the total through charge, but in the case before us these different packing houses pay freight upon the animals which they slaughter in proportion to distance, and that being so, the same element ought to be considered in fixing the proper relation in rates upon the product out. We hold that in deter-

mining relative rates from these three slaughtering markets to the three territories under consideration, distances up to these Mississippi River crossings through which the rates make may fairly be accepted as largely determinative.

These distances are as follows:

From—	To—		
	St. Louis.	Memphis.	Vicksburg.
	Miles.	Miles.	Miles.
Wichita.....	479	543	.....
Oklahoma City.....	543	496	.....
Fort Worth.....	720	530	308

From Fort Worth business seems to be handled for the southeast and for Carolina territory through Memphis, Vicksburg, and New Orleans. It did not clearly appear upon which one of these crossings the rate based, and it is probable that it may make sometimes upon one and sometimes upon another. .

From Oklahoma City traffic moves mainly through Memphis to both Carolina territory and the southeast, although it may also go through some of the lower crossings. From Wichita both Carolina territory and the southeast is also reached through Memphis. While business to trunk line territory is worked by southern lines through Memphis and perhaps through Vicksburg, especially when intended for certain Ohio River points and for Virginia cities, the rate makes in all cases through St. Louis.

All interests agreed that the distance from Fort Worth and from Oklahoma City to Carolina territory was substantially the same and that rates from both these points to this territory should be identical.

There was some dispute as to southeastern territory; but it is evident that with respect to that territory Fort Worth has an advantage over Oklahoma City in distance to the extent, at least, that its mileage to Vicksburg is less than that from Oklahoma City to Memphis. In our opinion this difference in distance fairly entitles Fort Worth to a proportional rate upon business for the southeast, which is 3 cents lower upon both packing-house products and fresh meat than the corresponding rate in effect from Oklahoma City.

The present rates from Wichita to both Carolina territory and the southeast are 1½ cents per 100 pounds higher than those from Oklahoma City. Giving the same effect to distance in establishing this differential which we have just done in establishing the differential between Fort Worth and Oklahoma City to southeastern territory, this should be increased to 2½ cents on both packing-house products and fresh meat.

While the short-line distance from Fort Worth is through Vicksburg and that from Oklahoma City through Memphis, the present tariffs indicate that lines leading from these two points of production desire to handle business through these gateways, and also New Orleans, and to this there is no apparent objection, since it in effect simply permits the long line to meet the short-line rate. It follows that proportional rates from Oklahoma City when for the southeast should be 3 cents higher through these three gateways than corresponding rates from Fort Worth. If Fort Worth lines desire to maintain the present rates to the southeast, which can hardly be pronounced excessive, this revision would properly be effected by advancing the rate from Oklahoma City when for this territory.

If lines from Fort Worth and Oklahoma City readjust these rates upon that basis, then lines from Wichita to Memphis should advance their rates both for Carolina territory and the southeast upon fresh meat and packing-house products, so that the rate as finally established will be $2\frac{1}{2}$ cents in excess of that from Oklahoma City upon traffic destined both to Carolina territory and the southeast.

To-day rates upon both fresh meat and packing-house products from Wichita to St. Louis for beyond are $24\frac{1}{2}$ cents. From Oklahoma City to St. Louis the proportional rates are upon packing-house products $28\frac{1}{2}$ cents, upon dressed meat $31\frac{1}{2}$ cents, equivalent to a differential above Wichita of $4\frac{1}{2}$ cents upon packing-house products and 7 cents upon fresh meat.

Rates from Fort Worth to St. Louis are $32\frac{1}{2}$ cents on packing-house products and $35\frac{1}{2}$ cents upon fresh meat, a differential of 4 cents upon both packing-house products and fresh meat in favor of Oklahoma City.

It will be seen, therefore, that while the distance from Oklahoma City to St. Louis is but 64 miles greater than from Wichita to St. Louis, its rates increase by $4\frac{1}{2}$ and 7 cents, while for an increase in distance amounting to 177 miles from Fort Worth to St. Louis as compared with Oklahoma City to St. Louis the rate increases but 4 cents in case of both fresh meats and packing-house products.

This apparent discrepancy was justified by the carriers upon the ground that under the present arrangement the distribution of tonnage was such that what Oklahoma City lost upon traffic through St. Louis by reason of the too favorable rate from Fort Worth it gained on traffic to the southeast by reason of its own too favorable rate as compared with Fort Worth to that locality.

While we are impressed that in the adjustment of these rates an earnest and an honest, as well as an intelligent, attempt was made to arrive at a just conclusion, we can not feel that the method employed in this latter particular was correct. The tonnage used as the basis

for arriving at this result was not necessarily that to which the rates would actually apply. Neither one of the packing houses at Oklahoma City was in full operation and one of them had scarcely begun operations at all at the time this computation was made. It seems to us if distance is to be regarded—and no fairer method of settling these differences was suggested by any party, nor was any objection seriously urged to this method—then each locality should be given that advantage over other localities to which its location entitles it. Every packing house will then enjoy a fair rate and can move under that rate whatever tonnage its business justifies. The other method tends to constrain from year to year the movement to certain channels instead of allowing it to take its free and undirected course.

Assuming that the present rate of $24\frac{1}{2}$ cents from Wichita to St. Louis is a proper one to apply as a proportional when the movement is for territory beyond the Indiana-Illinois state line, and that the present rates from Fort Worth to St. Louis of $32\frac{1}{2}$ cents upon packing-house products and $35\frac{1}{2}$ cents upon fresh meat are to remain in effect, we are of the opinion that the rate from Oklahoma City should be $27\frac{1}{2}$ cents upon packing-house products and $28\frac{1}{2}$ cents upon fresh meat.

This is a contest between these three localities. Fort Worth insists that its rate is too high as compared with Oklahoma City, or, otherwise stated, that the difference between those rates is too great. Oklahoma City insists that the rate from Fort Worth is too low as compared with its rate, or, in other words, that the difference is too small. The same statement applies to the contest between Wichita and Oklahoma City.

In this situation it is impossible for the Commission to prevent whatever discrimination may be found to exist by fixing a maximum rate or a maximum differential. In order to prescribe those rates or those differentials which will prevent discrimination for the future it is necessary to name the absolute rate or the absolute difference in the rates between these contending cities. So treating this question, we hold that the rate to St. Louis should be 3 cents per 100 pounds higher from Oklahoma City than that from Wichita upon packing-house products and 4 cents per 100 pounds upon fresh meat, and that the rate upon packing-house products from Fort Worth should exceed that from Oklahoma City by $5\frac{1}{2}$ cents and upon fresh meats by 7 cents.

In reaching this conclusion we have assumed that the present rate from Wichita to St. Louis is a reasonable one and that carriers do not desire to exceed from Fort Worth to St. Louis their present rates. If either the rate from St. Louis or from Fort Worth were to be materially changed, this might call for a revision of these differentials, but in our opinion they are as above fixed in substantial accord with corresponding differentials to Memphis and Vicksburg.

The interests representing the city of Wichita earnestly contended that while 24½ cents might be a reasonable local rate it was excessive as a proportional rate applied to business for beyond, but to this we can not agree.

It is 479 miles by the short line to St. Louis. The mileage scale which we have established would justify a rate of 44 cents upon packing-house products and 53 cents upon fresh meat. While the conditions under which this traffic is handled from Wichita to St. Louis might perhaps justify and require a somewhat lower rate than this, still there can be, in the nature of things, no such difference of condition as would warrant us in imposing a rate of 24½ cents between these points, as a purely local proposition, uninfluenced by competitive conditions. It is true that for several years, owing to competition between Kansas City and St. Louis, a rate of 19½ cents was maintained from Wichita to St. Louis, as a proportional rate applicable to business beyond, but we can not hold, at the present time, that this rate ought to be continued.

There remain for consideration rates to what has been termed Illinois territory, including the rate to Kansas City.

The present rate from Oklahoma City to St. Louis and Chicago upon fresh meat and packing-house products is 53 cents; from Fort Worth, 57 cents. The corresponding rate from Wichita to Chicago is 29½ cents. Oklahoma interests insist that this is a gross discrimination against Oklahoma City.

Upon examination it appears that the Chicago rate from Wichita is constructed by adding 5 cents to the St. Louis rate. This is apparently for the purpose of allowing lines leading from Kansas City through St. Louis to Chicago to compete for this business. It would not of necessity follow, in our opinion, that because rates from Kansas City or from any point from which the rate might fairly make through Kansas City were constructed to Chicago by this method that the same method should be employed in constructing rates from Oklahoma City and Fort Worth to Chicago.

The short-line distance from Oklahoma City to Chicago is 791 miles, and from Fort Worth 945 miles. The mileage rates which we have established for the distance from Oklahoma City would be 62 cents upon packing-house products and 74 cents upon fresh meat. The present live-stock rate from Oklahoma City to Chicago is 44½ cents, and from Fort Worth 49½ cents. It will be seen therefore that a rate of 53 cents upon both packing-house products and fresh meat is not grossly extravagant, considered by itself, but it is apparent that this charge is unduly discriminatory, as compared with 29½ cents from Wichita.

The present rate from Wichita to Kansas City is 12 cents upon packing-house products and 16½ cents upon fresh meat. The rate

from Oklahoma City to Kansas City is 53 cents upon both fresh meat and packing-house products, and from Fort Worth 60 cents.

The distances from these three points to Kansas City are:

	Miles.
From Wichita.....	208
From Oklahoma City.....	343
From Fort Worth.....	508

The rates on packing-house products and fresh meats for these distances, according to the scale which we have established, would be:

From—	Packing-house products.	Fresh meat.
	Cents.	Cents.
Wichita.....	25	30
Oklahoma City.....	34	41
Fort Worth.....	45	54

Assuming that this establishes, roughly, the correct relation in rates, we are of the opinion that the present schedule from these three points to Kansas City is unduly discriminatory in favor of Wichita, that the rate from Oklahoma City ought not to exceed by more than 40 per cent that contemporaneously in effect from Wichita, and from Fort Worth by not more than 75 per cent.

We are unable to understand the theory upon which present rates have been constructed to what is termed Illinois territory. There seems to be no definite relation between this and any other territory or any system of rate making applied to other territory. While we recognize the fact that competitive conditions might well justify the application of the proportional rates to St. Louis, to business beyond the Indiana-Illinois state line, and not perhaps to business to Chicago and west of that line, still, in the utter absence of any system suggested by the carriers themselves, we know of no better way than to apply to this territory rates constructed by adding to the trunk line proportional to St. Louis the local rate beyond St. Louis, whatever that may be, to a given point of destination. The present local rate from St. Louis to Chicago is 10 cents per 100 pounds upon packing-house products and 16½ cents upon fresh meat, and this would result in rates as follows:

From—	Packing-house products.	Fresh meat.
	Cents.	Cents.
Oklahoma City.....	37½	45
Fort Worth.....	42½	52

These rates are reasonably satisfactory as compared with the livestock rate with which they are in this case competitive, and also as compared with the rate from Wichita, giving to that community the advantage of its shorter route through other Mississippi River crossings.

Some question was raised as to present rates from Oklahoma City and Fort Worth, to St. Paul, Omaha, and Duluth, as compared with similar rates from Wichita, and the present adjustment does unduly discriminate in favor of the latter point. While it is difficult to understand how rates to these northern markets can be of much importance to these southern packing houses, still this does not justify a continuance of the present schedule, which should be readjusted so as to bring the same fairly into accord with rates here suggested for Kansas City and Chicago.

It was stated that the present transit privileges at Oklahoma City were satisfactory. Some complaint exists as to similar facilities at Wichita. It is unnecessary to say that whatever privilege of this kind is accorded at one market should also be extended to other markets where the circumstances and conditions are the same. This does not mean that carriers must establish transit privileges which involve out-of-line hauls or back hauls, nor that they should grant these privileges without proper compensation, but simply that whatever treatment is accorded to one market should be extended to all markets where conditions are the same.

The privilege of trying the market is of great benefit to the producer of live stock and ought, in our opinion, to be continued under reasonable terms and conditions, but as these markets multiply it becomes more and more evident that carriers may with propriety impose a reasonable charge for the performance of this service.

Attention was called upon the hearing to rates upon tankage, but the record contains nothing which indicates clearly the points to which these rates are desired, nor the nature of the complaint against those now in effect. No attempt will be made at this time to express any opinion upon that point.

Rates upon hides were also drawn in question, but it appears that the most acute ground of complaint has been already removed by a change in rates effective since this investigation was undertaken. To-day the only complaint seems to be directed against rates to lower Mississippi River crossings when for beyond. Without examining that matter in detail at this time, we assume that carriers will bring their tariffs upon this commodity into general harmony with the suggestions of the Commission.

The Commission has now before it, in what is known as the "Wool Investigation," Docket No. 4074, the general subject of rates on hides

covering a considerable portion of the United States, and if satisfactory rates are not voluntarily established a suitable order will be made in either that proceeding or the present.

Packing houses use in the conduct of their business large quantities of salt, and this, in the case of Oklahoma City, seems to be mainly derived from the Kansas field. One of the complaints before us is that the present rate is too high.

The Kansas salt field embraces several points of production, of which Anthony is nearest to Oklahoma City, the distance being 171 miles. The average distance from all points of production in this field is slightly in excess of 200 miles. The present rate is 15 cents per 100 pounds in carloads.

To show that this rate is unreasonable, Oklahoma interests point to the fact that carriers leading from the Kansas field to the Missouri River, which are in some cases identical with those extending from the same field to Oklahoma City, have established rates of 10 cents per 100 pounds for distances of from 200 to 275 miles, perhaps in some instances even greater. It must, however, be borne in mind that in this Missouri River territory Kansas salt comes into most active competition with that produced in the Michigan field and that the result of this competition has been to induce from both directions low rates of transportation.

We hardly think that the rates established under these conditions ought to be made the measure of a reasonable rate from this field to Oklahoma City. We are, however, of the opinion and find, considering the proximity of that field, that a rate not exceeding 12 cents per 100 pounds, carload minimum 40,000 pounds, would be reasonable to apply to the transportation of bulk salt from the Kansas field to Oklahoma City, and that the present rate is unreasonable to that extent.

It is quite probable that in the great number of parties to this proceeding and the complex and various issues presented something has been overlooked in the present disposition of the case which should have been considered, or that the conclusions of the Commission may lead to complications or results not intended. Any party in interest may therefore apply for a further finding or for a modification of the present findings in such case, but that application should be made within the next 30 days.

All parties evinced upon the hearing a disposition to abide by whatever conclusion the Commission might reach and we assume that carriers will voluntarily check in rates substantially in accord with the suggestions of this opinion. No order will be made at this time. Unless by February 1, 1912, tariffs have been filed, the Commission will proceed to the making of a definite order.

The following is the table of rates upon live stock, packing-house products, and fresh meat found to be reasonable in this report:

Statement showing proposed rates on live stock, fresh meat, and packing-house products, carloads, in cents per 100 pounds.

Distance.	Cattle; also hogs, sheep, or goats in double-deck cars, minimum carload, 22,000 pounds.	Hogs or calves in single-deck cars, minimum carload, 17,000 pounds.	Sheep or goats in single-deck cars, minimum carload, 12,000 pounds.	Packing-house products, minimum carload, 26,000 pounds.	Fresh meat, minimum carload, 26,000 pounds.
Miles.	Cents.	Cents.	Cents.	Cents.	Cents.
10	5½	6½	7	7½	7½
15	6	7	7½	8	8
20	6	7	7½	8½	8½
25	6	7	7½	9	9
30	6½	7½	8	9½	9½
35	7	8	8½	10	10
40	7½	8½	9	10½	10½
45	8	9	10	11	11
50	8½	10	11	11½	11½
55	9	10½	11½	12	12
60	9½	11	12	12½	12½
65	10	11½	12½	13	13
70	10½	12	13	13½	13½
75	11	12½	13½	14	14
80	11½	13	14	14½	14½
85	11½	13	14½	15	15
90	12	13½	15	15½	15½
95	12½	14	15½	16	16
100	12½	14	16	16½	16½
105	13	15	16½	17	17
110	13	15	17	17½	17½
115	13½	15½	17½	18	18
120	13½	15½	18	18½	18½
125	13½	16	18½	19	19
130	14	16	19	19½	19½
135	14	16½	19½	20	20
140	14½	17	20	20½	20½
145	14½	17½	20½	21	21
150	15	17½	21	21½	21½
155	15½	18	21½	22	22
160	15½	18	22	22½	22½
165	16	18½	22½	23	23
170	16	18½	23	23½	23½
175	16½	19	23½	24	24
180	16½	19	24	24½	24½
185	17	19½	24½	25	25
190	17½	20	25	25½	25½
195	17½	20	25½	26	26
200	18	21	26	26½	26½
210	18	21	26½	27	27
220	19	22	27	27½	27½
230	19½	23	27½	28	28
240	20	23	28	28½	28½
250	20½	24	28½	29	29
260	21	24	29	29½	29½
270	21½	25	29½	30	30
280	22	25	30	30½	30½
290	22½	26	30½	31	31
300	23	27	31	31½	31½
310	23½	27	31½	32	32
320	24	28	32	32½	32½
330	24	28	32½	33	33
340	25	29	33	33½	33½
350	25	29	33½	34	34
360	25½	30	34	34½	34½
370	26	30	34½	35	35
380	26	30	35	35½	35½
390	26½	31	35½	36	36
400	27	31	36	36½	36½
410	27	31	36½	37	37
420	27½	32	37	37½	37½
430	28	32	37½	38	38
440	28	32	38	38½	38½
450	28½	33	38½	39	39
460	29	33	39	39½	39½
470	29	33	39½	40	40
480	29½	34	40	40½	40½
490	30	34	40½	41	41
500	30	34	41	41½	41½
510	30½	35	41½	42	42
520	31	35	42	42½	42½
530	31	35	42½	43	43
540	31½	36	43	43½	43½
550	32	36	43½	44	44
560	32	36	44	44½	44½
570	32½	37	44½	45	45
580	33	37	45	45½	45½
590	33	37	45½	46	46
600	33½	38	46	46½	46½
610	34	38	46½	47	47
620	34	38	47	47½	47½
630	34½	39	47½	48	48
640	35	39	48	48½	48½
650	35	39	48½	49	49
660	35½	40	49	49½	49½
670	36	40	49½	50	50
680	36	40	50	50½	50½
690	36½	41	50½	51	51
700	37	41	51	51½	51½
710	37	41	51½	52	52
720	37½	42	52	52½	52½
730	38	42	52½	53	53
740	38	42	53	53½	53½
750	38½	43	53½	54	54
760	39	43	54	54½	54½
770	39	43	54½	55	55
780	39½	44	55	55½	55½
790	40	44	55½	56	56
800	40	44	56	56½	56½
810	40½	45	56½	57	57
820	41	45	57	57½	57½
830	41	45	57½	58	58
840	41½	46	58	58½	58½
850	42	46	58½	59	59
860	42	46	59	59½	59½
870	42½	47	59½	60	60
880	43	47	60	60½	60½
890	43	47	60½	61	61
900	43½	48	61	61½	61½
910	44	48	61½	62	62
920	44	48	62	62½	62½
930	44½	49	62½	63	63
940	45	49	63	63½	63½
950	45	49	63½	64	64
960	45½	50	64	64½	64½
970	46	50	64½	65	65
980	46	50	65	65½	65½
990	46½	51	65½	66	66
1000	47	51	66	66½	66½

Statement showing proposed rates on live stock, fresh meat, and packing-house products, carloads, in cents per 100 pounds—Continued.

Distance.	Cattle; also hogs, sheep, or goats in double-deck cars, minimum carload, 22,000 pounds.	Hogs or calves in single-deck cars, minimum carload, 17,000 pounds.	Sheep or goats in single-deck cars, minimum carload, 12,000 pounds.	Packing-house products, minimum carload, 26,000 pounds.	Fresh meat, minimum carload, 20,000 pounds.
Miles.	Cents.	Cents.	Cents.	Cents.	Cents.
500	32	36½	40	45	54
525	33	38	41	46	55
550	34	39	42	48	57
575	35	40	44	49	59
600	36	41	45	50	60
625	37	43	46	52	62
650	38	44	48	53	64
675	39	45	49	55	66
700	40	46	50	56	67
725	41	47	51	57	69
750	42	48	52	59	71
775	43	49	54	60	72
800	44	51	55	62	74
825	45	52	56	63	75
850	46	53	57	64	77
875	47	54	59	66	79
900	48	55	60	67	80
925	49	56	61	68	82
950	50	57	62	70	84
975	51	58	64	71	86
1,000	52	59	65	72	87

NOTE.—Two-line rates to be 2½ cents per 100 pounds higher than shown above.
22 I. C. C. Rep.

be disposed of at all and is frequently sent back to some local market. In such event the total expense would be much less if it went first to a nearby central point like Decatur.

For these and other reasons it was insisted by the complainant that if Illinois corn grown in the central part of the state tributary to Decatur could be handled there it would result in better prices to the growers. Upon the hearing many witnesses representing different interests appeared in support of these contentions. Only a few of them were heard, since their testimony was merely cumulative and the time was limited, but their attendance evinced their interest in the matter.

The speaker of the Illinois house of representatives was present and was examined as a witness. He testified that he was a farmer, and that, in his opinion, it would be distinctly for the benefit of the farmers of central Illinois if their corn could be conditioned at Decatur. He stated that so much had he been impressed with this idea that he had proposed to form a cooperative company for the purpose of erecting at Decatur an elevator, but desisted when he learned that the adjustment of freight rates was such that an elevator at that point could not exist.

It seems probable that this contention of the complainant is well founded and that the privilege of concentrating and handling corn grown in Illinois at interior points would lead to greater and fairer competition in the buying of that product and would, to some extent, improve the price otherwise paid the farmer.

The Illinois Central justifies the granting of these privileges at Cairo while refusing them at Decatur upon the ground that it is compelled to this course by competition at Cairo.

Grain rates ordinarily break at the Ohio River. Grain can be shipped from Central Illinois points of production to Cairo upon the local rate and reshipped from Cairo to a southern point upon the Illinois Central at the local rate with the same transportation charge that it can be shipped through from the point of origin to the final destination. It follows, therefore, that with respect to most points of origin and most points of consumption grain can be shipped into Cairo, kept in an elevator indefinitely, and finally shipped out at the same freight charge as though the shipment were a through transportation.

There are, however, some instances in which this can not be done, for the reason that the through rate makes upon some other point—usually some other Ohio River crossing—and for the purpose of permitting the grain dealer at Cairo to compete with other grain dealers located at the point where the rate does break, the Illinois Central and its connections establish through Cairo a through rate the same as the competitive rate by the other points and permit the

stoppage in transit. In other words, it allows transit at Cairo to put the grain dealer upon its line at Cairo upon an equality with the grain dealer upon some other line at some other point. But why should it not protect the grain dealer at Decatur as well as his competitor at Cairo? Why should it say to a grain dealer, If you will locate at Cairo you shall be protected against all the world; but if you locate at Decatur you must make the best of adverse conditions? If the grain dealer upon the Ohio River is entitled to the advantage accruing from the fact that rates break at his locality, the advantage ought not to extend beyond its cause.

It may be questioned whether carriers should ordinarily be permitted, by the mere form in which they elect to publish their tariffs, to ordain that any business shall be transacted at a particular point. The advantage of the Ohio River grain dealer is not derived from the fact that railroads end and begin at the Ohio River, but rather because their rates are constructed by adding together the rates to that river and from that river. If this results in discrimination against interior points which the carriers decline to remove, we perhaps ought to do what we did in the *Burnham-Hanna-Munger case*—construct a through rate which is less than the sum of the rates based upon the river.

The Illinois Central further relies, in justification of the granting of this practice at Cairo, upon competition of other lines serving that same locality. It states that this privilege is allowed by the Mobile & Ohio, the Louisville & Nashville, and perhaps by other lines, and that it must meet this competition by allowing the same privilege. This kind of reasoning does not appeal to us. The Illinois Central asserts that it establishes the transit privilege because the Mobile & Ohio does; the Mobile & Ohio will state that it is forced to grant such privilege by the action of the Illinois Central—all of which is merely a play upon words.

The real question is not whether these railroads do or do not compete at Cairo and decline to compete elsewhere, but whether there is any reason which justifies the competition at one point while refusing others. If the Illinois Central relies upon competition at Cairo it must show not only the fact but the reason for it. If there is no reason outside the mere whim of some traffic manager, then the Illinois Central must bear the burden of the poor company in which it finds itself at Cairo. Moreover, the grain which the Illinois Central carries through Decatur is not, for the most, competitive with those other lines.

The defendant urges that if this transit privilege is accorded at Decatur it will be demanded at other interior Illinois points. It appears that several towns have been insisting upon it in the past, and if accorded to Decatur it must perhaps be further extended. The

complainant expresses the opinion that elevators would not be constructed in over half a dozen interior towns; the defendant apprehends that the number would be very much larger.

The substantial objection which the defendant urges to extending these transit privileges at interior points is the additional trouble and expense which would be required to police such regulations.

It hardly seems probable that this would equal the apprehension of the defendant. Decatur and numbers of other Illinois towns already enjoy the milling-in-transit privilege, and it does not appear that this is attended with any unusual trouble or cost to the carriers; nor is it obvious how the difficulty could be much greater in case of grain handled in transit than with that milled in transit. But, still, it is true that to allow the stopping off of this grain at Decatur does entail a burden upon the defendant, for which it might properly require additional compensation, provided it did so at all points. To-day it is not only performing this additional service for nothing at Cairo but is actually paying the elevator owner three-fourths of one cent per 100 pounds for the privilege of giving him the extra service.

The Illinois Central should be permitted to charge whatever the additional service is fairly worth, but it should make that charge at all points and should not prefer one locality to another.

It appeared that Peoria, which lies about 75 miles northwest of Decatur, upon a branch of the Illinois Central, and which is not a rate-breaking point, already enjoys these transit privileges or their equivalent. In justification of this it was urged that Peoria had something more than twice the population of Decatur and was a very large grain-consuming point.

A community is not entitled to advantages in the adjustment of freight rates simply because it is larger than some neighboring community. It is not the function of railroads or of this Commission to so adjust railroad tariffs that business will be or will not be done at a particular locality. If a locality has natural advantages, it should be allowed to enjoy those advantages, but it ought not to be given the additional artificial advantage which arises from a discriminating railway tariff.

We are of the opinion and hold that if the Illinois Central accords at Cairo transit privileges in the handling of grain which it declines to accord to grain dealers at Decatur it is thereby guilty of undue discrimination against the grain dealer at the latter point, and that an order should be issued requiring this defendant to cease and desist from that discrimination. We do not hold that every village is necessarily entitled to all the privileges of a market, but confine this present decision to the two localities before us.

It is uncertain just how far it will benefit Decatur as a grain market or permit it to become a market for the handling of grain if this order is complied with. It has already been noted that in the great majority of instances grain can be handled at the Ohio River without the exercise of any transit privilege, for the reason that the rates break upon the river. We do not hold, at this time, that the defendant is guilty of undue discrimination by constructing its tariffs in that manner. It is evident that such a method of rate making may result in giving to the Ohio River cities a practical monopoly in the handling of this grain business; but the question is not directly presented in this proceeding, and is too important to be decided without further discussion.

Neither do we express any opinion as to the manner in which that discrimination should be removed if found to exist. The complainant suggested upon the hearing that the defendant should be required to put in at Decatur a system of "in" and "out" rates which would be equivalent to those at Cairo, but it seems apparent that no such plan would be feasible, since it would involve the construction of a different system for every interior point engaged in the handling of this corn.

At the present time the defendant is paying at Cairo an elevation allowance of three-fourths of one cent per 100 pounds, and the complaint covers both this elevation allowance and the transit privilege. It was stated upon the hearing that the right of the Commission to prohibit the payment of an elevation allowance was before the Supreme Court of the United States, and that this case would be controlled by that decision.

Since the hearing the Supreme Court has handed down decisions in two cases involving this subject. *Interstate Commerce Commission v. Diefenbaugh*, 222 U. S., 42; *Union Pacific R. R. Co. v. Updike Grain Co.*, 222 U. S., 215. A careful examination of those opinions leaves it somewhat doubtful just what the final determination of the court may be as to certain aspects of this elevation problem, but we think they fairly sustain the previous holdings of this Commission in so far as concerns a situation like that here presented. We have held in the past that to pay an elevation allowance to one shipper, while declining to pay it to another, or to pay it at one place while refusing to pay it at another, created an undue discrimination, unless justifying circumstances and conditions were shown.

To that decision we still adhere, and since, in our opinion, this record presents no reason why the Illinois Central should pay this allowance at Cairo and decline to pay it at Decatur we hold, confining our decision to these two places alone, that such a course of conduct

upon the part of the Illinois Central creates an undue discrimination from which that company should be ordered to cease and desist.

When this complaint was filed the Suffern Grain Company, complainant, owned an elevator at Turpin, Ill., a short distance from Decatur, at which it was transacting a grain business, buying from the farmer and selling to the central elevator. Since then the complainant has disposed of that elevator, and at the time of the hearing was not operating one at any point. The defendant insists that the complaint presents, therefore, a purely moot question and should, for that reason, be dismissed by us.

The Suffern Grain Company is still in existence and engaged in the grain business. Mr. Suffern testified that he had the means and desire to construct at Decatur an elevator for the purpose of treating and handling this corn as it is treated and handled upon the Ohio River, and that he would do so provided the adjustment of rates permitted. Other witnesses before the Commission stated that the advisability of constructing elevators at Decatur had been under consideration and that these operations had only been prevented by the present relation of rates.

This Commission would not, ordinarily, be disposed to require of these defendants the publication of tariffs which could not be used. Upon the other hand, we do not think that this complainant should be expected to expend a hundred thousand dollars in the erection of an elevator which will be of no value whatever unless the desired change in rates can be obtained. It should be its right to ascertain, in advance, whether these defendants will or whether they can be compelled to establish those rates which we have held to be just and lawful. If the defendants signify to the Commission within 30 days their acceptance of the conclusions here reached and state that they will, whenever an elevator properly equipped for the handling of this grain is erected at Decatur, comply with the findings of this opinion, no order will be made; otherwise, we will issue an order.

No. 2982.
E. F. SANGUINETTI
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted July 5, 1911. Decided January 9, 1912.

Rates charged complainant for the transportation of various shipments of general merchandise from certain eastern points to Yuma, Ariz., found unreasonable, and reparation awarded.

G. M. Stephen for complainant.

A. P. Humburg for Illinois Central Railroad Company.

F. C. Dillard and *L. T. Wilcox* for Morgan's Louisiana & Texas Railroad & Steamship Company, Texas & New Orleans Railroad Company, and other lines.

T. J. Norton and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

It is alleged in the petition of the complainant, filed November 18, 1909, that the defendants collected unreasonable charges for the transportation of various shipments of general merchandise from certain designated eastern points to Yuma, Ariz. Reparation is sought.

This case was presented to the Commission informally September 8, 1908. The evidence shows that the rates charged and paid by complainant for the transportation of the articles designated in the petition, to Yuma, exceeded the rates in effect on the same articles for carriage from the respective points of origin to Los Angeles, Cal., plus the local rates from Los Angeles to Yuma.

Defendant Southern Pacific Company appeared at the hearing and signified its willingness to refund the charges paid by complainant in excess of the Los Angeles combination, if authorized so to do by the Commission. The tariffs of this defendant formerly provided for the application of the combination rate on Los Angeles upon

shipments to Yuma from various eastern points, and effective January 2, 1911; this provision was reinstated and is now in effect.

Upon consideration of all the facts and circumstances appearing, it is the opinion and conclusion of the Commission that the rates charged complainant, specified in this proceeding, were unreasonable to the extent the same exceeded the rates from the several points of origin to Los Angeles plus the rates from Los Angeles to Yuma.

The complainant is entitled to an award of reparation in the sum of \$110.89 with interest thereon from December 4, 1908.

Defendant Southern Pacific Company, having adjusted its tariffs in accordance with the views herein expressed, no order will be made at this time with respect to the rates for the future.

22 I. C. C. Rep.

No. 4070.

CITIZENS OF SOMERSET, DRUMMOND, AND FRIENDSHIP HEIGHTS, MD.,

v.

WASHINGTON RAILWAY & ELECTRIC COMPANY ET AL.

Submitted November 11, 1911. Decided January 9, 1912.

For more than 10 years prior to June 1, 1910, defendants, who are engaged in operating electric street railways in the District of Columbia and in the state of Maryland, charged for the transportation of passengers over their lines between Somerset, Md., and points in the district, a cash fare of 5 cents, or six fares for 25 cents. Effective June 1, 1910, they increased the fare by requiring the payment of 5 cents between Somerset and the district line, plus 5 cents or a ticket purchased at the rate of six for 25 cents, between the district line and points within the district. They also provided for the transportation between Somerset and the district line a monthly commutation of \$1.73 for 26 round trips. Complainants allege that the increased fare is unjust and unreasonable. Defendants aver (1) that as electric street railways they are not subject to the jurisdiction of the act to regulate commerce; and (2) that they are not engaged in interstate transportation of passengers or property. They offer no evidence to sustain the increased fare as "just and reasonable;" *Held*, That defendants are common carriers engaged in the transportation of passengers between points in a state and points in the district, and are therefore amenable to the terms of the act; that having failed to justify the increased fare complained of, the same is found to be unreasonable to the extent that it exceeds a cash fare of 5 cents or six fares for 25 cents, which fares are prescribed for the future.

Charles D. Drayton and Charles S. Moore for complainants.

George P. Hoover for Washington Railway & Electric Company and Georgetown & Tennallytown Railway Company.

William H. Talbott for Washington & Rockville Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are citizens of the villages of Somerset, Drummond, and Friendship Heights, in the state of Maryland. Their petition, filed May 4, 1911, assails as unreasonable, excessive, and unjust, the fare charged by defendants for the transportation of passengers between Somerset and points in the District of Columbia.

Somerset is a suburban village situated a little less than half a mile from the line between the state of Maryland and the District of Columbia, and slightly over 6 miles from the business center of the city of Washington, in said district. Drummond and Friendship Heights are also suburban villages, the former situated immediately north and the latter immediately south of Somerset. The combined population of the three villages numbers about 500, many of whom are employed, or have their places of business, in Washington and travel daily in both directions over defendants' lines.

The Washington Railway & Electric Company and Georgetown & Tennallytown Railway Company are corporations, under the laws of the United States, engaged in operating electric street railways in the District of Columbia. The lines of the two companies intersect at Thirty-second and P streets and Thirty-second and O streets northwest, in Washington, at which point passengers are exchanged from one line to the other under an arrangement whereby transfers are given which entitle passengers to continuous carriage over the lines.

The Washington & Rockville Railway Company is a Maryland corporation engaged in operating a line of electric railway between Rockville, Md., and the District of Columbia, a distance of about 10 miles. The cars of the several companies are propelled by power furnished by the Potomac Electric Power Company whose plant is situated in the District of Columbia.

In traveling between their homes in Somerset, Drummond, and Friendship Heights and points within the city of Washington, in either direction, complainants pass over the lines of two or more of the defendants.

For a period of about 11 years prior to June 1, 1910, the defendants charged and collected a cash fare of 5 cents or six fares for 25 cents, for passenger travel between Somerset and points in the District of Columbia served by their lines. On June 1, 1910, the fare was increased 5 cents, or a monthly commutation fare of \$1.73 covering 26 round trips, between Somerset and the district line.

As the increase in the fare was after January 1, 1910, under section 15 of the act to regulate commerce the burden of proof to show that the increased fare is just and reasonable rests with the defendants. They have offered no evidence to discharge such burden, but rest their defense entirely upon other grounds. First, they contend that the Commission is without jurisdiction in the premises, and, second, they aver that the increased fare is due to compulsory legislation by the state of Maryland with respect to the Washington & Rockville Railway Company.

Upon the question of jurisdiction it is contended that electric street railways are not common carriers by "railroad," within the meaning

of the act to regulate commerce. This question has been passed upon by the Commission several times, and our rulings have been uniformly to the effect that such railways are common carriers by "railroad," and when engaged in the interstate transportation of passengers or property are amenable to the provisions of the act. *Willson v. R. C. Ry. Co.*, 7 I. C. C. Rep., 83; *West End Improvement Co. v. Omaha & Council Bluffs Ry. & Bridge Co.*, 17 I. C. C. Rep., 239; *Beall v. W., A. & M. V. Ry. Co.*, 20 I. C. C. Rep., 406. In a proceeding to restrain the Commission's order in the second case referred to, the Commerce Court rendered a decision October 5, 1911, fully sustaining the Commission's views.

It is further contended that defendants are not engaged in interstate transportation of passengers or property, and for that reason are not subject to the act. It is insisted that they are separate and distinct corporations engaged in the operation of separate and distinct lines of railway; that the Washington Railway & Electric Company is not engaged in interstate commerce or in anywise concerned in the transportation of passengers over the line of the Washington & Rockville Company; and that the Georgetown & Tennallytown Company is not engaged in interstate commerce, or in anywise concerned in fixing the fare for the transportation of passengers over the Washington & Rockville line.

The line of the Washington Railway & Electric Company extends from the extreme eastern portion of the city of Washington through the business and official centers of the city to and beyond the intersections with the line of the Georgetown & Tenallytown Company at Thirty-second and P streets and Thirty-second and O streets, aforesaid. The line of the Georgetown & Tennallytown Company extends from a point near the intersection of Thirty-second and M streets, northwest, via Thirty-second street and Wisconsin avenue to the dividing line between the District of Columbia and the state of Maryland. There is no railway station at the district line nor is there any interruption of the tracks at that point.

Passengers from points on the line of the Washington Railway & Electric Company are charged a cash fare of 5 cents, or six fares for 25 cents, and are given transfers to the line of the Georgetown & Tenallytown Company, at Thirty-second and P streets. Passengers originating on the line of the latter company are charged at the same rate and are given transfers to the line of the Washington Railway & Electric Company.

Passengers from points on either line destined to Somerset, or to other points in the state of Maryland, are carried through to destination without change of cars at the district line, and like through carriage is given passengers from Somerset and from other points in

Maryland destined to points in the district. The cars of the Washington & Rockville Company are operated over the line of the Georgetown & Tenallytown Company in the district, as well as over its own line in the state, and the cars of the Georgetown & Tenallytown Company are operated over the line of the Washington & Rockville Company in the state, as well as over its own line in the district. At certain seasons cars belonging to the Washington Railway & Electric Company are operated on the lines of the Georgetown & Tenallytown and Washington & Rockville Companies and carry passengers from points in the district to Rockville and return without change.

There is now, and has been for more than 10 years, through transportation of passengers via the lines of the Washington & Rockville and Georgetown & Tennallytown Companies, without change of cars at the district line, between points in the state and points in the district, the same cars, motormen, and conductors being used throughout the entire journey. Under the transfer arrangement at Thirty-second and P streets there likewise exists, and has existed for some time, through transportation of passengers over the lines of all three of the defendants, by continuous carriage without change of cars at the district line, between points in the district served by the Washington Railway & Electric Company and Somerset and other points in the state. By these means passengers have been and are still daily transported between points in the district and points in the state, in either direction. The existence of a through route was in effect conceded by the general manager of all three companies who, in the course of his examination at the hearing, testified as follows:

Q. Under that arrangement, Mr. Fuller, the understanding between the street railway companies and the public, as far as there could be any understanding, was that the companies held themselves out as willing to carry, and as in fact carrying, passengers from points in the district to Somerset on one fare? That was the understanding, was it?

A. That was a reasonable assumption; yes.

Q. In other words, that was the holding out of the companies, so far as the public was concerned?

A. That is what we did for practically 10 years, to my positive knowledge.

It thus appears not only that through transportation between Somerset and the district has existed in fact, but that the defendants have continuously held themselves out to the public as engaged in such through transportation. The double track upon which the cars of the Georgetown & Tennallytown Company and the cars of the Washington & Rockville Company operate to and from Somerset ends at that point.

The Washington Railway & Electric Company owns the entire capital stock of the Washington & Rockville Company and about three-fourths of the capital stock of the Georgetown & Tennallytown

Company. While the several companies are operated as separate and distinct corporations, they have the same general officers and are controlled by boards of directors composed almost entirely of the same persons. These facts have a tendency to show a common purpose or understanding on the part of the several companies in harmony with the fact of the through transportation shown of record.

The fact that through tickets are not used or through fares paid does not prove the transportation to be other than interstate. As to passengers who travel from points in the state to points in the district served by the Washington Railway & Electric Company, or vice versa, all three of defendants participate in the through transportation and in the fares charged therefor. As to points in the district served only by the Georgetown & Tennallytown Company, that company and the Washington & Rockville Company participate in the through transportation and in the fares charged therefor. A through route exists over which passengers are actually transported by continuous carriage, and the fact that joint rates or fares may not now be in force does not prove that the transportation is not interstate in character.

The situation is well illustrated by an agreement entered into June 1, 1910, between the Georgetown & Tennallytown Company and the Washington & Rockville Company, providing, among other things, for the interchange and rental of cars by said companies, wherein it is stated as follows:

Whereas the Rockville Company and the Tennallytown Company are and have been for some time past jointly operating a through electric railway service from the town of Rockville, Maryland, to Wisconsin avenue and M street nw., Washington, D. C., and from Somerset Heights, Maryland, to the same place; and

Whereas the Tennallytown Company is at present, as owner or lessee, operating nine (9) or more cars used in the above joint operation from Wisconsin avenue and M street nw., to Somerset Heights, Maryland, and to Rockville, Md., and the Rockville Company is owner or lessee of six (6) or more cars, including "Market Car" also used in above joint operation, all of which said cars are housed in the car barn located on Wisconsin avenue nw., near the district line, owned by the Washington Railway & Electric Company and leased by it to the Tennallytown Company.

The facts thus stated show that the two defendants, parties to the agreement, are and have been engaged in "jointly operating a through electric railway service" between points in Maryland and points in the District of Columbia. It was conceded by counsel for the district companies at the hearing that under an arrangement between the Georgetown & Tennallytown Company and the Washington & Rockville Company, through transportation of passengers has obtained and still obtains from points in the district to Somerset and other points in Maryland. It further appears that the Georgetown & Tennallytown Company and Washington & Rockville Company are and

have been engaged in the transportation of freight from points in the district to Somerset and other points in Maryland, for which through billing is made and joint rates are charged by the two companies. No tariffs of charges for either freight or passenger transportation have been filed with the Commission by these defendants, as is required by the act.

Under all the circumstances we are of opinion that the matters set forth in complainants' petition are within the scope of the act to regulate commerce, and that the jurisdiction of the Commission is clear.

The second ground of defense is that by act of the legislature of the state of Maryland, Laws of 1910, Ch. 220, the Washington & Rockville Company is compelled to charge the additional fare between Somerset and the district line complained of in this proceeding. Prior to that act the Washington & Rockville line was divided into four zones, for each of which, or part thereof, a passenger fare of 5 cents was charged. The act *supra* required the company to divide the line into not exceeding three zones, the first to extend from the district line to a stated point about three and a half miles beyond, and the others to be as nearly equal as the conditions would permit, and it was provided that the rate or fare from each zone, or part of a zone, should not exceed 5 cents. There is no provision to the effect that the Washington & Rockville Railway Company shall charge a fare of 5 cents between Somerset and the district line. So far as that act is concerned the company may charge less than 5 cents and may accord free service or special commutation rates.

Testimony was introduced by defendants to show that prior to June 1, 1910, transportation of passengers between Somerset and the district line was performed as a gratuitous service. From other evidence of record, however, it appears that both prior and subsequent to that date, the uniform custom has been to collect fares from passengers boarding the cars at Somerset, immediately upon leaving that point, and before the cars reached the district line. It has also been the custom to charge and collect fares for passenger travel between Somerset and Friendship Heights, in either direction. These facts are not consistent with the theory that the service was free, especially in view of the insistence by defendants that all fares collected on the Washington & Rockville line belong to that company.

Another Maryland statute enacted by the same legislature that passed the one just considered is also relied on by defendants. Laws of 1910, Ch. 180. That is a general statute creating a public service commission with jurisdiction over common carriers within the state, which prohibits the granting of free transportation by such carriers. It is argued that the terms of this general statute are controlling,

and therefore that the Washington & Rockville Company could not lawfully give the free transportation allowed under the act first referred to, which is special and local in its application. But it is not necessary to grant free transportation as to any part of the service in order to apply the fare formerly charged between Somerset and points in the district. Nor would such a course be lawful under the act to regulate commerce.

Our conclusion is that the grounds of defense urged by defendants are unsound and can not be sustained.

The defendants have made no effort to discharge the burden placed upon them by the statute to prove that the increased fare is just and reasonable. We accordingly find that defendants having failed to justify the increased fare for passenger travel between Somerset, Md., and points in the District of Columbia, herein complained of, that the same is unjust and unreasonable to the extent that it exceeds the fare continuously applied between those points for more than 10 years prior to June 1, 1910, which fare will be prescribed for the future. An order will be entered accordingly.

22 I. C. C. Rep.

No. 3858.
SUN COMPANY
v.
INDIANAPOLIS SOUTHERN RAILROAD COMPANY ET AL.

Submitted November 2, 1911. Decided January 9, 1912.

Western classification rule under which crude oil is estimated to weigh as much as or more than its actual weight, and gas oil, used for the same purposes, is estimated to weigh substantially less than its actual weight, held to be unjustly discriminatory. Reparation awarded.

Francis S. McIlhenny and John H. Minds for complainant.

R. V. Fletcher and A. P. Humburg for Illinois Central Railroad Company and Indianapolis Southern Railroad Company.

W. F. Dickinson and Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company.

N. S. Brown for Wabash Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Is the rule of the western classification which provides for an estimated weight of 7.4 pounds per gallon on crude petroleum oil transported in tank cars unreasonable, discriminatory, and prejudicial, and, if so, has complainant been damaged thereby?

Complainant corporation is a producer and shipper of oil. It has refineries at Philadelphia, Pa., and at Toledo, Ohio, and offices at Philadelphia, Pa., and at Robinson, Ill. A shipping or distributing point for its products is located at Stoy, Ill., a point local to the line of the Illinois Central Railroad, 16 miles from the Indiana state line.

In petition, filed February 15, 1911, complainant alleges that during the period from January 25, 1909, to November 15, 1910, it shipped 109 tank cars of crude oil from Stoy to Des Moines, Iowa; 1 to Ottumwa, Iowa; and 45 to Sioux Falls, S. Dak.

The shipments were consigned to gas plants, and all but one were billed as "gas-making oil." The shipping weight was computed by complainant on the basis of either 6.4 or 6.6 pounds per gallon, dependent on the date of shipment, on the gallonage capacity of the

cars. Defendants' inspectors, however, raised the weight to 7.4 pounds per gallon and collected charges on that weight. Reparation in the difference in the freight charges on the basis of these weights is asked by complainant. In addition it is alleged that complainant has been seriously handicapped in its business and has suffered great pecuniary damage, for which it claims reparation.

The official classification provides an estimated weight on petroleum and its products, including crude, fuel, and gas oils, of 6.6 pounds per gallon, an increase effective January 1, 1910, from 6.4 pounds per gallon.

The southern classification contains similar provision.

The Illinois classification provides for an estimated weight on petroleum and its products of 6.6 pounds per gallon.

Prior to October 1, 1903, under the western classification, petroleum and the products thereof were carried at an estimated weight of 6.4 pounds per gallon. On that date crude oil was withdrawn from this provision and the estimated weight thereon was increased to 7.4 pounds per gallon. On August 1, 1907, the estimated weight on fuel oil was also increased to 7.4 pounds per gallon. On May 1, 1910, the estimated weight on all oils, excepting crude and fuel, was increased from 6.4 to 6.6 pounds per gallon.

Shipments from Stoy move under three classifications, dependent upon the destination and direction of the shipment. That is, on shipments east the official classification governs; westward to points west of the west bank of the Mississippi River the western classification applies; and westward to points on and east of the Mississippi River the Illinois classification governs. The western classification is applicable from Stoy to all the points of destination to which the shipments involved in this complaint were made.

Crude oil, as the name implies, is the natural oil as it comes from the wells. It is said to be distinguishable from refined oils by its odor and different color. It is somewhat difficult to determine from the testimony precisely what commercial gas oil is, for the reason that it is a loose term, and oils, both refined and crude, are used for gas-making purposes, but, chemically, gas oil is a distillate of crude oil, some of the heavier or lighter constituents having been removed.

The crude oil to which this complaint refers weighed from 7.08 to 7.12 pounds per gallon. After complainant's contract for the furnishing of crude oil to the gas-making plants at the three points mentioned was completed complainant's oil was displaced by gas oil furnished by the Standard Oil Company's Sugar Creek refinery, which weighed from 7.37 to 7.43 pounds per gallon.

The superintendent of the gas company at Sioux Falls, which purchased the gas oil which displaced complainant's crude oil, when

asked if there was any difference for his purposes between gas and crude oil, stated:

Not a bit in the world. I made extensive tests. In Savannah, Ga., I was engineer for the company and made numbers of tests with gas oils and with crude oils and we found we could purchase both about the same price there. Practically there was no difference and it was just a question of the best results we could get, and we found the results were practically the same.

So now if you were making a contract for oil you would likely take it at the lowest price, regardless of whether it was crude oil or gas oil?

Yes; that is what we did last year. We got a low price on gas oil, and took it. It amounted not to much, but a little.

The difference in the estimated weights added 12½ per cent to the rate on crude oil. Crude oil is sold on so close a margin that a slight difference in the price per gallon is sufficient to lose or secure the business.

While greater heat or a slightly different process is needed to manufacture gas from crude oil than from gas oil, the testimony shows that notwithstanding crude oil contains a greater amount of sulphur than gas oil it is as valuable for gas-making purposes.

Petroleum and its products are carried at the same rates. In 1906 the consulting chemist for the western classification committee made tests for the committee of from 150 to 300 samples of petroleum oil from wells in western classification territory, with the following results:

Kind of oil.	Samples from wells and refineries in—	Average actual weight per gallon.
		Pounds.
Illuminating oil.....	Kansas, Texas, Indian Territory, and Missouri.....	6.762
Engine oil.....	Texas.....	7.099
Neutral oil.....	Indian Territory.....	7.178
Fuel oil.....	Kansas, Missouri, Indian Territory.....	7.518
Gas oil.....	Kansas and Missouri.....	7.258
Lubricating oil.....	Texas and Kansas.....	7.458
Crude oil.....	Colorado, Kansas, Louisiana, and Indian Territory.....	7.335
Gasoline.....	Colorado, Kansas, Missouri, Texas, and Indian Territory.....	6.963
Cylinder oil.....	Texas, Louisiana, and Indian Territory.....	7.856
Naphtha.....	Indian Territory.....	6.192

Another test was made of 50 samples of Kansas oil, with the following results:

	Average actual weight per gallon.	Pounds.
1. Gasolines.....		6.10
2. Naphthas.....		6.20
3. Illuminating and water white.....		6.70
4. Lubricating and neutral.....		7.35
5. Gas oil and crude oil.....		7.10
6. Fuel oil.....		7.40
7. Residuum.....		7.60

It will be noted that gasoline and naphtha are the only ones of these oils which weigh less than the estimated weight.

Complainant has no refinery at Stoy. Most of its competitors own refineries comparatively near their wells. Those producers of oil having pipe lines and refineries pipe the crude oil to the refinery, and the products move out on the estimated weight of 6.6 pounds per gallon.

The report dated May 2, 1906, of the Commissioner of Corporations of the Department of Commerce and Labor on the transportation of petroleum was placed in evidence. It is there stated that:

The railroad companies serving the Kansas field are perfectly aware of the injustice of fixing a higher arbitrary weight on crude oil than on gas oil and fuel oil produced by the refineries. The matter has been up before them for consideration, but the power of the Standard Oil Company has been sufficient to compel them to continue the unjust discrimination.

As has been seen, on August 1, 1907, after that report was made, the estimated weight of fuel oil was made the same as that of crude oil.

Assessing charges by computation on estimated weights is satisfactory to carriers and shippers. There is no contention that the rates are unreasonable or discriminatory.

The position of defendants, briefly summarized, is:

First. The separation of refined products and crude oil is a natural grouping.

Second. The estimated weights are a scientifically determined fair general average of the actual weights of the respective oils.

Third. The rule complained of is fair, reasonable, and nondiscriminatory.

Fourth. Complainant, on the supposition that the estimated weight on crude oil transported west of the Mississippi River would be the same as on crude oil carried eastward from Stoy, made a lower bid than it otherwise would, and, to cover the loss due to its mistake, misbilled the shipments as "gas-making oil," and does not come before the Commission with clean hands. And that even if the rule is declared to be unlawful, reparation should not be awarded.

Fifth. Complaint is due to complainant's not having a refinery at or near Stoy.

We may dismiss the first contention with the statement that any grouping, whether of rates, localities, or commodities, must not be unreasonable or result in undue discrimination, and the fifth on the ground that a refinery is not an instrumentality of transportation.

A glance at the statements hereinbefore presented casts doubt on the second contention.

The third and fourth contentions contain the crux of the case.

We have here a somewhat peculiar situation. The rule attacked is in the western classification with respect to traffic carried by lines the majority of the mileage of which is (leaving southern territory out of consideration) in official classification territory, and the greater portion of the distance the traffic was carried was in a state which, having a classification of its own and normally in official classification territory, is actually, by tariff application, in all three classification territories. Therefore, so far as the estimated weight is concerned, whether crude oil is actually that commodity or a petroleum product is not dependent upon its character, but upon the direction in which it moves.

From this situation it results that by rebilling a tank car of crude petroleum at a Mississippi River crossing the aggregate charges are lower than the amount charged at the joint rate and higher estimated weight. To illustrate: A car of oil estimated to weigh 59,200 pounds at 7.4 pounds per gallon could in 1909 have been shipped through from Stoy to Ottumwa at rate of 22.56 cents per 100 pounds or a total charge of \$133.56. On a commodity rate of 15 cents and estimated weight of 6.4 pounds per gallon, from Stoy to East Burlington, Ill., or Burlington, Iowa, the charges would have been \$76.80. On the fifth class rate of 7.7 cents and estimated weight of 7.4 pounds the charges from East Burlington to Ottumwa would have been \$45.58, a total charge on combination of \$122.38. Notwithstanding the aggregate of intermediate rates is slightly higher than the through rate, complainant could have saved \$11.18 by rebilling at East Burlington; and on shipments to Des Moines or Sioux Falls, inasmuch as the distances are greater, the differences would be more marked.

In *Lull Carriage Co. v. C., K. & S. Ry. Co.*, 19 I. C. C. Rep., 15, it was held:

The minimum weights on all carload shipments are to be considered as part of the rates, and the mere fact that a minimum applicable to parts of a combination of rates may be higher or lower than the minimum applicable to the joint through rate does not overcome the presumption of unreasonableness in a joint rate and minimum in excess of the sum of the locals and resulting from the respective minima applicable thereto.

From the tables it is seen that gas oil from Kansas and Missouri is 0.082 pounds lighter per gallon than crude oil from Colorado, Kansas, Louisiana, and Indian Territory, and in Kansas they weigh the same. The lighter oils, illuminating oil, naphtha, and gasoline, move in greater volume in the east than do the heavier oils such as lubricating oil and crude oil. It appears that western oils are heavier than eastern oils. Making allowance for temporary variations, gas oil and crude oil sell at approximately the same price. They are both used for making gas.

Gas oil and crude oil are like commodities, transported under substantially similar circumstances and conditions as to rates and carriage, and are competitive.

To estimate gas oil as weighing so greatly less than its actual weight, and crude oil in excess of its true weight is, and for the future will be, unjustly discriminatory against crude oil and the shippers thereof, and unduly preferential to gas oil and the shippers thereof.

In *Davies v. I. C. R. R. Co.*, 16 I. C. C. Rep., 376, the Commission said:

The estimated weights * * * are intended to be the fair average actual weight, and are not fixed for the purpose of giving either to the shipper or to the carrier an advantage in the matter of freight charges. On the contrary, such tariffs are established, as we understand them, simply to expedite the service and minimize the labor and expense of carriage.

One witness for complainant testified that if a car of crude oil "hesitated" at a refinery it was considered no longer crude oil. While this is probably exaggerated, it strongly suggests the slight real difference between gas oil and crude oil, and emphasizes the inherent unreasonableness of the different estimated weights.

We are not impressed with the contention that the billing of the shipments as "gas-making oil" vitiates complainant's claim for reparation. If it had been billed as gas oil, if the agent at point of origin had not been fully aware that the oil that was being shipped was crude oil, and if the action had not been taken as a protest against the higher estimated weight, a different conclusion might be warranted.

The remaining questions to be considered are the measure of damages and the rule for the future. The Commission can award only rate damages.

The courts have held that under the equality provisions of the law the shipper who receives no rebates is discriminated against by reason of other shippers having been so favored, and has a right to recover in the amount of such rebates from the lawful rate. *Pennsylvania R. R. Co. v. International Coal Mining Co.*, 173 Fed. Rep., 1; *Mitchell Coal & Coke Co. v. P. R. R. Co.*, 181 Fed. Rep., 403. There has here been no departure from tariff provision, and the cases are cited to show that damages suffered by a shipper have been measured by the difference between the rate paid by such shipper and the lowest rate paid by his competitor, even though the favored shipper paid less than the legal rate.

In view of the many kinds of oils weighing more than the estimated weights and defendants' argument that it was a fair general average scientifically determined, it would seem that the scientific

ascertainment would not have been disarranged by the inclusion of crude oil.

We are of the opinion that complainant has been unlawfully damaged in the difference between the estimated weights of 6.4 and 6.6 pounds per gallon and 7.4 pounds per gallon on all of its shipments of crude oil delivered at the three points of destination before named subsequently to February 14, 1909, and is entitled to reparation on those bases at the lawfully established rates in effect at the time the several shipments moved, with interest from November 15, 1910.

Complainant may submit to defendants statements of the shipments, which, after being checked and verified by defendants, will be forwarded to the Commission, and an order for payment of the amounts specified will be issued.

In the report of the Commissioner of Corporations, *supra*, it is said:

A reasonable adjustment of arbitrary weights on Kansas oil and its products would appear to be to fix the weight on crude oil at 7.2 pounds; on naphtha, illuminating oils, and lubricating oils at 6.4 pounds, gas oil at 7.2 pounds, and on fuel oil remaining after the refining process at 7.6 pounds.

That report deals with the Kansas field, not the entire western classification territory, and more specifically with fuel oil as compared with crude oil.

We will not now enter an order for the future rule for estimating weights on oils. Defendants will submit to the Commission a rule under which crude oil and gas oil which weigh approximately the same will be transported at the same estimated weight which shall fairly approximate the actual weights. If such action is not taken on or before March 1, 1912, the Commission will prescribe the rule.

The case will be held open for such further proceedings as may be necessary.

No. 3283.

R. W. SILVESTER ET AL.

v.

CITY & SUBURBAN RAILWAY OF WASHINGTON ET AL.

Submitted January 15, 1911. Decided January 8, 1912.

Complainants, who reside on the electric line between Washington, D. C., and Laurel, Md., attack the schedule of single fares and monthly commutation fares established by the defendants for transportation between points on their line in Maryland and the city of Washington; *Held*, That, upon the record, said fares are not shown to be unreasonable.

Thompson & Van Sant for complainants.

S. Russell Bowen for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are residents of certain villages in Maryland, near the city of Washington, D. C., and they travel over the continuous line formed by the roads of the defendants. They bring this petition in their own behalf as well as for the traveling public, and, in substance, attack defendants' entire schedule of rates for interstate transportation. The defendant City & Suburban Railway of Washington operates an electric line, which extends from Fifteenth and G streets, N. W., Washington, D. C., hereinafter referred to as the Treasury terminus of that line, east and north through the District of Columbia 5.18 miles to the boundary line of the district near the town of Mount Rainier, Md.; from that place it extends 4.77 miles in Maryland to Berwyn, Md., a total length for the whole line of 9.95 miles from the Treasury to Berwyn. The defendant, Washington, Berwyn & Laurel Electric Railway Company, was at the institution of this proceeding a separate company, but its property has since been taken over by the City & Suburban Railway. The tracks of the Berwyn & Laurel road have always been continuous with those of the City & Suburban Railway and extend from Berwyn to the town of Laurel,

Md., a distance of 8.95 miles. The total length of the entire line, now owned by the City & Suburban Railway, from the Treasury to Laurel is 18.9 miles, and the road will be referred to herein as the Laurel line.

The petition sets forth the present fares and those which the petitioners deem reasonable and ask this Commission to establish for the future. Briefly stated, the prayers of the petition are for a lengthening of the fare zones in Maryland, a reduction in commutation fares, and an increase in the number of trips allowed on commutation tickets within a calendar month from 52 to 62. Within the District of Columbia, by act of Congress, street railways are required to carry passengers for a 5-cent fare and to sell six tickets for 25 cents, each ticket entitling the holder to one ride. Beyond the District of Columbia, in Maryland, the Laurel line has divided its territory into zones of approximately two and one-half miles each. In the following table will be found the names of the stations involved in this proceeding; the distance of each station from the Treasury in Washington; the present rates, single fare, and 52-trip monthly commutation ticket, the single fare being based upon the use of a ticket within the district; and the rates asked by complainants, both single fare and 62-trip monthly commutation ticket:

Station.	Dis- tance.	Present fares.		Fares asked.	
		Single fare.	Fifty- two-trip monthly.	Single fare.	Sixty-two- trip fare.
	Miles.	Cents.		Cents.	
District line.....	5.18	5	None.	No change.	No change.
Hyattsville, zone 1.....	6.82	9		do.....	\$1.00
Riverdale, zone 1.....	7.72	9	2.50	do.....	2.00
College Park, zone 2.....	8.72	14	4.00	9	2.00
Berwyn, zone 2.....	9.95	14	4.00	9	4.00
Daniel's Park, zone 3.....	10.00	19	6.10	14	4.50
Beltville, zone 3.....	13.19	19	6.10	14	5.00
Ammendale, zone 4.....	14.19	24	7.40	14	5.50
Laurel, zone 5.....	18.90	29	8.00	24	6.50

For the purposes of this report it may be assumed that each passenger would take the car at the Treasury on the outgoing trip and leave the car at that point on the incoming trip; for on this line within the district the passenger has the option at five track crossings to take transfers which, without additional payment, entitle him to ride to other points in the city of Washington. The Treasury is near the business and official center of the city, and as a point of origin and destination it may be assumed to represent a fair average of the actual trips paid for over the lines of the defendants to and from suburban points. On this assumption the revenues from single fares per passenger mile as they now are and as petitioned in this com-

plaint may be compared; and the revenues from commutation tickets per trip may also be compared, as set forth in the following table:

Stations.	Dis- tance, miles.	Present fares.		Proposed fares.	
		Single fare; per mile.	Fifty- two- trip book; per trip.	Single fare; per mile.	Sixty- two- trip book; per trip.
		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Hyattsville.....	6.82	1.35	6.73	1.35	3.07
Riverdale.....	7.72	1.18	6.73	1.18	4.52
College Park.....	8.72	1.74	9.23	1.05	5.48
Berwyn.....	9.95	1.42	9.23	.92	6.45
Daniel's Park.....	10.60	1.81	11.73	1.33	7.26
Beltsville.....	13.19	1.45	11.73	1.07	8.07
Ammendale.....	14.19	1.70	14.23	.99	8.87
Laurel.....	18.90	1.54	15.38	1.27	10.48

The line of the defendants beyond the city limits is what is ordinarily known as a suburban electric trolley line. It was built near and practically parallel to the tracks of the Baltimore & Ohio Railroad between Hyattsville and Laurel; and it is evident that its fares must bear some relation to those charged by the steam railroad or it would get very little business. The distances to Washington via the Baltimore & Ohio Railroad and via the Laurel line are not the same. This is not due solely to the fact that the steam road has its terminus at the Union station, more than a mile east of the Treasury, but also to the fact that the tracks are not parallel within the district.

The charges of the Baltimore & Ohio Railroad for its various tickets to and from the stations named are as follows:

Station.	Dis- tance.	One way.	Round trip.	10 trips.	Monthly.	
					60 trips.	Per trip.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>			<i>Cents.</i>
Hyattsville.....	6.6	15	30	\$1.30	\$4.45	7.41
Riverdale.....	7.5	20	38	1.50	4.75	7.91
College.....	8.5	20	40	1.70	5.05	8.41
Berwyn.....	9.8	25	49	1.95	5.40	9.00
Beltsville.....	12.9	30	60	2.60	6.30	10.50
Ammendale.....	13.9	35	70	2.80	6.60	11.00
Laurel.....	18.7	45	90	3.75	8.05	13.41

A comparison of the charges of the steam and electric lines discloses that for single or round trips the electric line is invariably the cheaper. The monthly commutation tickets of the electric line, for the stations named, are cheaper in each instance than the commutation tickets issued by the steam line monthly. It should be borne in mind, however, that the electric line issues monthly tickets good only for 52 trips within the month named, whereas the steam road's monthly ticket covers 60 trips. If, therefore, the comparison be

made on the basis of the cost per trip, it will be seen that the charges of the electric line, per commutation trip, are lower to Hyattsville and Riverdale than those of the steam road and higher than those of the steam road for all other stations. The complainants insisted that the comparison of the commutation charges of the electric and steam roads be made between the 52-trip monthly tickets of the electric line and the 180-trip quarterly tickets of the steam line. Such a comparison would not be proper for obvious reasons, among which may be mentioned the fact that even the steam road has not seen fit to make its monthly ticket approximate the price of its quarterly ticket. It is to be observed also that the service offered by the two roads is not identical in any particular. The steam road lands its passengers at the Union Station, within a short distance of the Capitol, the Government Printing Office, and the Census Office. The electric line, by transfer, takes its passengers to nearly every portion of the District of Columbia. If the passenger on the steam road wishes to go to the Treasury, or elsewhere in the district beyond the usual short walking distance, it will cost him an additional car fare, whereas the passenger on the electric line may obtain a transfer to most places in the district without additional fare.

The record contains testimony to the effect that the present charges do not give defendants a fair return on the value of their property; but in the view we take of this case it is not necessary to go into that phase of the question. The one-way fares here involved are slightly less per passenger mile than those established by the Commission in *Beall v. W. A. & M. V. Ry. Co.*, 20 I. C. C. Rep., 406; and the commutation fares are a trifle less for similar distances than those approved in *Boyle v. G. F. & O. D. R. R. Co.*, 20 I. C. C. Rep., 232. The fares for single trips by the electric line are lower from every station than those by the steam line; they are even lower than the mileage rates, at 2 cents per mile under the 1,000-mile ticket, and on the record before us we can not find that they are unreasonable or unjust. Neither do we find any justification on the record for extending the defendants' zones. Nor do we find that the commutation fares are in violation of the act. The complaint will be dismissed.

It clearly appears from the record that defendants are and have been for some years engaged in the transportation of passengers by railroad, by continuous carriage, from points in the District of Columbia to points in the state of Maryland, and vice versa; but they have never filed with the Commission and posted a tariff covering their charges for this service, as required by section 6 of the act. Defendants will be expected to comply with the provisions of law respecting the filing and posting of tariffs.

No. 3786.

RAILROAD COMMISSION OF NEVADA

v.

NEVADA-CALIFORNIA-OREGON RAILWAY AND SIERRA
VALLEYS RAILWAY COMPANY.

Submitted June 13, 1911. Decided January 9, 1912.

1. The fact that the defendants' division of the joint rate from Sacramento via Reno to Nevada-California-Oregon points is considerably lower than the Nevada-California-Oregon local rates from Reno to the same points does not amount to undue discrimination by the Nevada-California-Oregon Railway against Reno.
2. The present local rates of the Nevada-California-Oregon Railway from Reno are not found unreasonable.

H. F. Bartine, J. F. Shaughnessy, W. H. Simmons, Cleveland H. H. Baker, and E. H. Walker for Railroad Commission of Nevada.

N. J. Barry and J. M. Crawley for the Nevada-California-Oregon Railway and Sierra Valleys Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The complainant in this case, the Railroad Commission of the state of Nevada, on behalf of certain merchants resident at Reno, alleges (1) that there is undue discrimination against Reno in that the rates charged from Reno to the several points on defendants' lines are higher than the division of the joint rate from San Francisco or Sacramento received by defendants for the same hauls; and (2) that the local rates charged from Reno to points on defendants' lines are unreasonable *per se*. The entire schedule of class and commodity rates northbound is brought in issue, and a new list of commodity rates is proposed.

The Nevada-California-Oregon Railway is a narrow-gauge line extending 184 miles northerly from Reno into northeastern California, Alturas being the terminal at the time of hearing. From Plumas, on the line of this road 34 miles from Reno, the Sierra Valleys Railway reaches 37 miles westerly to Mohawk, or Clio, as it is now known. For a number of years this branch line has been under the management and control of the Nevada-California-Oregon Railway, and is now owned by it under foreclosure of mortgage.

The Southern Pacific Company connects with the Nevada-California-Oregon at Reno. A joint tariff on traffic from California points

on the Southern Pacific is in force, but all goods must be transferred to narrow-gauge cars at Reno. The Western Pacific crosses the Nevada-California-Oregon and maintains a transfer station for east-

bound and westbound goods at Doyle, 57 miles from Reno. West of the main line, the Western Pacific parallels the Sierra Valleys Railway throughout the latter's entire length. The accompanying map shows the situation.

According to the evidence, the Nevada-California-Oregon runs through a comparatively unproductive country, yielding little or no traffic for the first 75 miles. From Hot Springs, Madeline, and Alturas considerable traffic is forwarded by team to the surrounding country, these three points receiving $71\frac{1}{2}$ per cent of the northbound business and 45 per cent of the southbound.

The bulk of the northbound traffic of the California-Nevada-Oregon Railway is through traffic originating in Sacramento and destined to a competitive territory which is served by the Southern Pacific and the Western Pacific as well as the California-Nevada-Oregon Railway. The chief competitive areas are Surprise Valley, which is reached by team hauls from Gerlach on the Western Pacific and Alturas on the California-Nevada-Oregon Railway, and the group of towns represented by Adin and Bieber, which are reached by team hauls from Bartle, on the McCloud River road, a branch of the Southern Pacific, and Madeline on the California-Nevada-Oregon Railway.

The situation in Suprise Valley is indicated by the following rate comparison. From Sacramento to Gerlach on the Western Pacific the rates are:

Class....	1	2	3	4	5	A	B	C	D	E
Rate	115	96	86	69	57.5	57.5	44	38	32	29

From Sacramento to Alturas on the California-Nevada-Oregon Railway the joint rates are:

Class....	1	2	3	4	5	A	B	C	D	E
Rate	145	126	116	99	87.5	87.5	73	68	55.5	55.5

The wagon haul to Cedarville is 25 miles from Alturas and 78 miles from Gerlach, and the California-Nevada-Oregon gets most of this business; while the wagon haul from Alturas to Eagleville is 41 miles, from Gerlach 62 miles, so that the Western Pacific gets this business. The traffic to surrounding territory is divided.

The competition in the Adin and Bieber territory is as follows: From Sacramento to Bartle via the Southern Pacific and the McCloud River Railroad is 294 miles. From Sacramento to Madeline via the Southern Pacific and the California-Nevada-Oregon is 298 miles. Adin is 60 miles from Bartle and 35 miles from Madeline by team haul. Bieber is 49 miles from Bartle and 50 miles from Madeline. At the time of the hearing the rate adjustment was so

made that practically all the Bieber tonnage came through Bartle, while all the Adin tonnage came through Madeline. Since the hearing the third and fourth class rates from Sacramento to Bartle have been reduced. Furthermore, all the joint class rates from Sacramento to Madeline have been reduced. We have no evidence of the present distribution of the tonnage, but the changes in rates indicate that an active competition for this territory is now in progress.

Since the time of the hearing in this case a new joint tariff has been issued cancelling the joint rates then in effect from Sacramento and San Francisco to points on the Nevada-California-Oregon Railway and also a new local tariff cancelling the rate from Reno to points on the Nevada-California-Oregon Railway. This new local tariff will be effective December 15. Since reparation is not asked for, but a determination of rates for the future, we shall confine our attention to a consideration of the rates at present effective, rather than those effective when the hearing was held.

First, let us consider whether the difference between the local rates of the Nevada-California-Oregon Railway, as compared with the Nevada-California-Oregon division of the through rates from Sacramento via Reno to points on the Nevada-California-Oregon Railway involves undue discrimination against Reno as the petition alleges.

The present joint class rates from Sacramento to Alturas (338 miles) are:

Class....	1	2	3	4	5	A	B	C	D	E
Rate	145	126	116	99	87.5	87.5	73	68	55.5	55.5

The divisions of these joint rates are as follows:

72

188.5 54
54 54

The local rates from Sacramento to Reno (154 miles) are—

Class....	1	2	3	4	5	A	B	C	D	E
Rate	85	71	64	51	43	43	34	28	25	21

The local rates from Reno to Alturas (184 miles) are—

Class....	1	2	3	4	5	A	B	C	D	E
Rate	130	123	116	99	82	82	55	50	42	42

Thus it appears that the Southern Pacific division of the joint rates to Alturas almost equals its local rates in the higher classes

and actually exceeds its local rates in the three lower classes. Reference to the tariffs also shows that the Southern Pacific division of the joint rates to Madeline exceeds the local rates in the seven lower classes and its division of the joint rate to Hot Springs exceeds its local rate in all classes.

In the case of the Nevada-California-Oregon Railway, however, its local class rates from Reno to Alturas considerably exceed its division of the joint rate as is shown by the following comparison:

A 3x3 grid of small, stylized icons representing various professions or roles. The icons are arranged in three rows and three columns. The first row contains icons for a person in a hard hat, a person in a lab coat, and a person in a suit. The second row contains icons for a person in a hard hat, a person in a lab coat, and a person in a suit. The third row contains icons for a person in a hard hat, a person in a lab coat, and a person in a suit.

¹ Nevada-California-Oregon local freight tariff No. 9, I. C. C. No. 122, effective Dec. 15, 1911.

² Joint freight tariff No. 44 A, I. C. C. No. 74, effective Mar. 31, 1911.

The comparison above is based on the rates to Alturas; the rates to Madeline and Hot Springs show similar conditions. Does this difference amount to an undue discrimination against Reno in favor of Sacramento? A wide spread is apparent between the local rate and the Nevada-California-Oregon division of the through rate. If the Nevada-California-Oregon Railway was alone responsible for this wide divergence, we would be forced to find unreasonable discrimination. The evidence, however, shows very clearly that the division of the through rate is practically beyond the control of the Nevada-California-Oregon Railway and, further, that the joint rates are the result in no small part of competitive conditions at Sacramento which do not correspondingly affect the Reno local rates. The evidence shows two things:

1. That the present joint tariff was forced on the Southern Pacific and the Nevada-California-Oregon by the advent of the Western Pacific, which has already taken from the Nevada-California-Oregon most of its business along its Sierra line, and which, by quoting low rates to Gerlach, Nev., has secured the Eagleville business and affords potential competition to other points in Surprise Valley which are now reached by teams from Alturas. Furthermore, the joint rates are lower because of the competition of the Shasta line of the Southern Pacific for the business at Adin and Bieber via Bartle. Disregarding the evidence offered to prove water competition up the Sacramento River, we are forced to conclude that the

route from Sacramento to Nevada-California-Oregon points via Reno is undoubtedly in competition with the Bartle route and with the Western Pacific via Doyle to all points on the Nevada-California-Oregon Railway.

2. The Nevada-California-Oregon Railway must take what division of the through rate it can get from the Southern Pacific. Seventy-three per cent of the northbound tonnage of the Nevada-California-Oregon Railway was, up to the time of the hearing, received by it from the Southern Pacific at Reno. From the evidence it appears that a part, at least, of this tonnage could be diverted by the Southern Pacific so as to go by its Shasta branch to Bartle rather than by the Nevada-California-Oregon Railway to Madeline. It would be to the advantage of the Southern Pacific to so route its freight destined for the Adin-Bieber territory, since its mileage by that route would be much greater. Only by allowing the Southern Pacific to have the lion's share of the division via Reno can the Nevada-California-Oregon Railway secure this traffic at all.

We can see, then, good reasons why the through rate may reasonably be less than the combination rate via Reno, and also why the spread between the Nevada-California-Oregon local rate and the Nevada-California-Oregon division of the through rate may be considerable without amounting to *undue* discrimination against Reno on the part of the Nevada-California-Oregon Railway.

It is a matter of every-day observation that a through rate may properly be less than the sum of the locals. It is urged in this case, however, that since the through freight must all be transferred at Reno there is no excuse for this difference here. It is true that the extra expense occasioned by the transfer should tend to equalize the through rate and the sum of the locals, but the general principle remains that a through rate may well be lower than the sum of the locals, although the cost of service is the same, if the lower through rate is forced by competition which does not affect the local rates.

In dismissing that part of the complaint which alleges discrimination because of the wide spread between the Nevada-California-Oregon local rate and the Nevada-California-Oregon division of the through rate we can not, however, shut our eyes to the fact that this difference in the rates is very prejudicial to the interests of Reno, and, therefore, we are impelled to scrutinize carefully the local rates of the Nevada-California-Oregon Railway to determine whether they are not in themselves unreasonable.

In considering the reasonableness of a whole schedule of rates we may well at the outset make inquiry as to the general financial condition of the railroad. The complainant has made a comparison

of the receipts and expenditures of the Nevada-California-Oregon Railway for four years, as follows:

Year ending June 30—	Gross earnings.	Operating expenses.	Average rate per ton-mile.	Oper- ating ratio.	Net operating revenue.	Freight revenue.	Dividend on capital stock.	
							Amount.	Kind.
1907.....	\$267,305.58	\$119,197.72	\$0.03821	<i>Per cent</i> 44.59	\$148,107.86	\$160,851.23	\$30,000	<i>Per cent.</i> 14
1908.....	338,668.20	171,565.07	.04848	50.66	167,103.13	209,233.25	37,800	15
1909.....	406,668.10	177,811.35	.05652	43.72	228,856.75	253,199.36	52,000	15
1910.....	447,857.17	218,604.84	.04735	48.81	229,252.33	268,721.09	52,000	15

¹ Preferred.

² Common.

These figures show an increase in gross earnings of 67.54 per cent in 1910 over 1907, together with an increase of 83.4 per cent in operating expenses, 54.79 per cent in net operating revenue, and 73.33 per cent in dividends paid. This would seem to indicate a progressive increase in the prosperity of the road. Some of this increase would appear to have resulted from the extensions of the road in 1907 and 1908, as shown in the following comparison of revenue:

Comparison of revenue, 1907-1910.

Year.	Mileage.	Freight revenue.	Passenger revenue.	Total reve- nue from transportation.
1907.....	143.84	\$160,735	\$81,923	\$267,305
1908.....	164.24	209,233	102,489	333,725
1909.....	184.01	253,199	124,156	400,830
1910.....	184.01	268,721	147,149	442,235

These figures, however, indicate little as to the present or future earnings of the road, because since March, 1910, the whole condition of its traffic has been changed by the advent of the Western Pacific and the resulting loss of business and reductions in joint and local rates. The table compiled by the complainant shows the financial condition of the road from June 30, 1907, to June 30, 1910. During this time the joint tariff (83-B) quoted a minimum rate of \$2.20 from Sacramento to Alturas, \$1.85 to Madeline, and \$1.55 to Hot Springs on all classes. Since then the Nevada-California-Oregon Railway established with the Southern Pacific Company its first joint class tariff (No. 44, effective April 30, 1910), and thereunder the Nevada-California-Oregon Railway was allowed a division much lower than it had previously received on through traffic. But on March 21, 1911, another joint tariff (44-A) became effective, still further reducing most of the class rates and many of the commodity rates. Below is a table showing the reduction in the Nevada-California-Oregon division of the through class rates, effected by Joint Tariff No. 44-A, which came into operation subsequent to the period on which complainant based its argument that the road is prosperous.

Reduction in division of the through class rates.

SACRAMENTO TO ALTURAS.

	Class.									
	1	2	3	4	5	A	B	C	D	E
Nevada-California-Oregon division of joint rate before Mar. 21, 1911.....	Cents. 88.74	Cents. 80.23	Cents. 72.40	Cents. 63.69	Cents. 58.80	Cents. 54.98	Cents. 34.84	Cents. 34.84	Cents. 28.31	Cents. 28.31
Nevada-California-Oregon division of joint rate after Mar. 21, 1911.....	78.90	68.60	63.10	53.89	47.60	47.60	39.70	37.00	30.20	30.20
Reduction.....	9.84	11.43	9.30	9.80	11.2	7.38	.....	.....	.....	.....
Increase.....	.....	.....	.....	.....	.....	.....	4.86	2.16	1.89	1.89

SACRAMENTO TO MADELINE.

Nevada-California-Oregon division of joint rate before Mar. 21, 1911.....	88.74	80.03	72.40	63.69	58.40	54.98	34.84	34.84	28.31	28.31
Nevada-California-Oregon division of joint rate after Mar. 21, 1911.....	70.06	60.88	56.06	47.83	42.28	42.28	29.96	28.77	22.96	22.96
Reduction.....	17.68	19.15	16.35	15.86	16.12	12.70	4.88	6.07	5.35	5.35

SACRAMENTO TO HOT SPRINGS.

Nevada-California-Oregon division of joint rate before Mar. 21, 1911.....	52.98	47.29	43.38	38.64	34.85	34.85	19.20	19.02	16.18	16.18
Nevada-California-Oregon division of joint rate after Mar. 21, 1911.....	48.00	40.89	36.62	29.57	25.07	25.07	15.29	14.76	11.56	11.56
Reduction.....	4.98	6.40	6.76	8.17	9.78	9.78	3.91	4.26	4.62	4.62

As already noted, at the time of the hearing 78 per cent of the northbound traffic of the Nevada-California-Oregon Railway moved under joint rates. From this it appears that on the greater part of the northbound traffic a very substantial reduction has taken place in the Nevada-California-Oregon Railway's freight receipts since the hearing.

But not only have the freight receipts per 100 pounds been reduced, but the joint tonnage also has been lessened. The evidence showed that the Nevada-California-Oregon Railway had lost to the Western Pacific practically all the tonnage to Mohawk on the Sierra Line. Besides, part of the 73 per cent northbound tonnage which the Nevada-California-Oregon previously received from the Southern Pacific at Reno is now being received by it from the Western Pacific at Doyle, so that its haul is shorter and its division of the joint rate appears to be correspondingly less.

Furthermore, it should be noted that since the four years' period cited by complaint as showing the prosperous condition of the Nevada-California-Oregon Railway there has been a considerable reduction in the local rates. On June 5, 1910, a tariff went into effect which reduced class rates and added several commodity rates at

the request of Reno shippers. The local class rates before and after June 5, 1910, are compared below:

Local rates before and after June 5, 1910.

RENO TO ALTURAS (184.1 MILES).

RENO TO MADELINE (144 MILES).

Before June 5, 1910.....	180	143	120	114	100	100	55	50	40	40
After June 5, 1910.....	109	103	96	93	70	70	47	44	37	37
Reduction.....	51	40	24	21	30	30	8	6	3	3

RENO TO HOT SPRINGS (85 MILES).

Before June 5, 1910.....	94	86	77	67	61	61	33	29	24	24
After June 5, 1910.....	69	66	63	60	45	45	30	27	24	24
Reduction.....	25	20	14	7	16	16	3	2	0	0

This indicates that on the 27 per cent of northbound traffic which moves out of Reno on local class rates there have been comparatively recent reductions varying from 2 cents to 65 cents per 100 pounds.

The result of all these changed conditions—lower local rates from Reno, lower joint rates from Sacramento, strong competition by the Western Pacific—is strikingly shown by the following comparison of freight earnings of the Nevada-California-Oregon Railway:

Month.	Freight earnings.		Increase.	Decrease.
	16 months ending April 30, 1910.	16 months ending April 30, 1911.		
	1909.	1910.		
January.....	\$9,643.32	\$19,653.67	\$7,010.35	
February.....	14,738.93	17,484.97	2,746.06	
March.....	20,163.10	18,080.92		\$2,132.18
April.....	22,995.55	15,108.99		7,886.56
May.....	24,947.81	17,982.27		6,965.54
June.....	27,450.20	18,666.06		8,884.13
July.....	28,004.21	15,837.79		12,166.42
August.....	28,256.58	24,865.81		3,390.77
September.....	29,875.17	27,849.03		2,026.14
October.....	35,045.34	26,299.32		8,746.02
November.....	33,825.82	17,315.34		16,510.48
December.....	19,990.07	13,543.70		6,446.37
	1910.	1911.		
January.....	16,653.67	4,347.25		12,306.42
February.....	17,484.97	7,725.05		9,759.92
March.....	18,080.92	8,806.00		9,274.92
April.....	15,108.99	12,624.06		2,484.93
Total.....	352,071.75	263,026.96		89,044.79
Per cent of decrease.....				25.29

The complainant answered this exhibit by pointing out that it included three abnormally low months—January, February, and March, 1911—and proffered the opinion that if the figures for May and June were available the average for the previous four-year period would be maintained. An examination of the complete annual report of the Nevada-California-Oregon Railway for the year ending June 30, 1911, however, only confirms the conclusions suggested.

With the new material furnished by this report before us a comparison of the last five years will be enlightening:

Year ending June 30—	Gross earnings	Oper- ating ex- penses.	Average rate per ton-mile.	Oper- ating ratio.	Net op- erating revenue.	Freight revenue.	Dividend on capital stock.		Balance to credit account profit and loss.
							Amount.	Kind.	
				<i>Per cent.</i>				<i>Per ct.</i>	
1907.....	\$267,306	\$119,197	\$0.03821	44.5	\$148,107	\$160,851	\$30,000	14	\$280,934
1908.....	338,668	171,566	.04848	50.6	167,103	209,233	37,500	15	299,290
1909.....	406,668	177,811	.05652	43.7	228,856	253,199	52,000	15	436,836
1910.....	447,857	218,004	.04735	48.8	229,853	268,721	52,000	15	472,686
1911.....	338,967	242,992	.04202	71.6	95,975	194,343	22,500	13	471,090

¹ Preferred.

² Common.

Thus it becomes clear that the financial condition of the Nevada-California-Oregon Railway has radically changed in the last year or so. The gross earnings have decreased by over one hundred thousand dollars (1910-1911), while operating expenses have increased, so that the operating ratio has jumped from less than 50 per cent to over 70 per cent. The result is that no dividends were paid during the past year on the \$1,450,000 of common stock, and only 3 per cent was paid on the \$750,000 of preferred stock. The road has obviously had a leaner year than for some time past.

The gross earnings have decreased not only because the ton-mile rate has been reduced by tariff changes, but also because the tons carried have fallen off from 57,748 tons in 1909 and 54,707 tons in 1910 to only 42,024 tons in 1911.

On the other hand the operating expenses have increased. During the past year the item for maintenance of roadway and track under the heading of Maintenance of Way and Structure is \$91,733.07. This is 37 per cent of the total operating expense and seems abnormally large for this road. But it appears that extensive renewals have been made in the road, for 259 tons of steel rails have been laid during the year, as compared with 104 tons in 1910 and practically none in 1909. This increase in the renewal work has led to a great increase in the number employed and in the total wages paid.

22 I. C. C. Rep.

It should be recalled that since the hearing, besides the reduction in joint rates, the Nevada-California-Oregon Railway has voluntarily introduced several new local commodity rates and has also filed a new local tariff to become effective December 15, 1911, which further reduces the fourth class rate, effective since June 30, 1910, between Reno and Alturas from \$1.10 to 99 cents, as well as lowering some commodity rates and introducing certain new ones to Alturas. Since the northbound tonnage contains a large portion of fourth class matter, this latest reduction of 11 cents per 100 pounds will effect quite a saving to Reno shippers.

In view of this financial showing and of the manifest purpose of the road to reduce its rates to suit new conditions, any further reduction by the Commission at present seems unwarranted, especially when we find that local rates in Nevada on other small roads are on an exceptionally high scale.

In conclusion it may be pointed out that the real basis of the complaint is the fact that Reno merchants find it impossible to compete with Sacramento traders in markets which geographically may be said to belong to Reno. This complaint has much merit, but no reduction in the local rates of the Nevada-California-Oregon Railway can overcome the disadvantage under which Reno labors. The real difficulty lies in the transcontinental commodity rates to Reno. The Commission has considered these in another proceeding. The relief therein proposed would enable Reno to get its share of the business along the Nevada-California-Oregon Railway, and no other action by the Commission can have this effect.

The complaint will be dismissed.

22 I. C. C. Rep.

INVESTIGATION AND SUSPENSION DOCKET No. 49.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF BARLEY, BRAN, AND WHEAT.

No. 1794.

MARICOPA COUNTY COMMERCIAL CLUB

v.

SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY
ET AL.

Submitted November 14, 1911. Decided January 9, 1912.

Advanced rates on barley, bran, and wheat from Phoenix, Ariz., and nearby points to various other points in Arizona found to be unreasonable. New rates prescribed.

F. A. Jones and E. J. Kuster for complainant.

E. P. Hastings and E. W. Camp for Santa Fe, Prescott & Phoenix Railway Company and Arizona & California Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Phoenix is the commercial center of the Salt River Valley, the most productive agricultural and horticultural section of Arizona. The Santa Fe, Prescott & Phoenix Railway Company operates between Phoenix and Ash Fork (195 miles) where it makes a junction with the main transcontinental line of the Santa Fe system. It was originally built as an independent road, over quite heavy grades in part, but is now a Santa Fe property. It also operates under lease (1) that part of the Arizona & California Railway between Wickenburg and Parker (106 miles). This railway is a new line which extends westerly from Wickenburg into California and makes a junction with the main line of the Santa Fe at Cadiz; (2) the Prescott & Eastern Railway (26 miles) extending easterly to Poland and Mayer; and (3) the Bradshaw Mountain Railway (35 miles) extending from Mayer to Crown King.

In September, 1908, the Maricopa County Commercial Club filed five petitions asking for reductions in class and commodity rates

generally within, out of, and into Arizona. The petition in Docket No. 1794, *inter alia*, alleged that the rates on grain from Phoenix to points on the Santa Fe, Prescott & Phoenix were unreasonable. Since that time certain of these rates have been reduced. The carriers sought, as of July 6, 1911, to increase the rates on barley, bran, and wheat, and suspension was ordered by the Commission. Hearing was had upon this order, and so much of the record in Case No. 1794 as was applicable was incorporated in the new record. The following table shows the history of the rates in effect from Phoenix and a small group of stations immediately north thereof to the points affected:

From Phoenix to—	Distance.	Rates in October, 1908.	Present rates.	Sus- pended rates.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Wenden (A. & C.).....	103	30	22.5	26
Salome (A. & C.).....	109	30	22.5	26
Vicksburg (A. & C.).....	119	31	22.5	26
Prescott (S. F., P. & P.).....	137	20	20	23
Bouse (A. & C.).....	138	31	22.5	26
Prescott and Eastern junction (P. & E.).....	143	20	20	29
Jerome junction (S. F., P. & P.).....	155	22.5	22.5	30
Cherry Creek (P. & E.).....	157	26	26	30
Humboldt (P. & E.).....	159	27	27	30
Huron (P. & E.).....	163	29	29	31
Parker (A. & C.).....	164	31	22.5	31

After full hearing, investigation, and consideration the Commission finds all of the present rates, as well as the suspended rates upon barley, wheat, and bran, to be unreasonable, and will direct that an order be issued establishing the following as just and reasonable rates on barley, bran, and wheat, in straight or mixed carloads, minimum weight 40,000 pounds, from Peoria, Glendale, Alhambra, and Phoenix, Ariz., to—

[Rates in cents per 100 pounds.]

	Distance.	Rates to be pre- scribed (carload mini- mum, 40,000 pounds).
	<i>Miles.</i>	<i>Cents.</i>
Wenden, Ariz.....	103	20
Salome, Ariz.....	109	20
Vicksburg, Ariz.....	119	20
Prescott, Ariz.....	137	22
Bouse, Ariz.....	138	22
Prescott and Eastern junction, Ariz.....	143	22
Jerome junction, Ariz.....	155	24
Cherry Creek, Ariz.....	157	24
Humboldt, Ariz.....	159	24
Huron, Ariz.....	163	24
Parker, Ariz.....	164	24

No. 1795.

MARICOPA COUNTY COMMERCIAL CLUB

v.

PHOENIX & EASTERN RAILROAD COMPANY ET AL.

No. 1830.

SAME

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted December 29, 1911. Decided January 9, 1912.

Rates on condensed milk from Creamery, Ariz., to named points on the Santa Fe system found to be unreasonable, and new carload and less-than-carload rates established for the future. Rate of 55 cents on condensed milk from Creamery, Ariz., to Los Angeles, Cal., found not to be unreasonable.

F. A. Jones, E. G. Kuster, and E. P. Costigan for Maricopa County Commercial Club.

C. W. Durbrow, F. C. Dillard, P. F. Dunne, and H. A. Scandrett for Southern Pacific Company and Arizona & Eastern Railroad Company.

W. G. Barnwell, P. P. Hastings, L. H. Chalmers, Paul Burke, T. J. Norton, and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company and Santa Fe, Prescott & Phoenix Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The original complaints in cases Nos. 1795 and 1830, filed in October, 1908, attack a large number of commodity rates to, from, and between points in Arizona, including rates on condensed milk from Creamery, Ariz., to named points in Arizona, New Mexico, Nevada, and California. In October, 1911, the petitioner was permitted to file a supplemental petition in these cases, attacking numerous other condensed-milk rates from points in Arizona. A further hearing on the rates involved in the supplemental petition will be necessary before the question of their reasonableness can be settled. At this time we shall dispose only of the condensed-milk rates from Creamery (Tempe) attacked in the original petitions.

Creamery is the home of the Pacific Creamery Company, the only condensed-milk plant in Arizona. It is located on what was formerly the Phoenix & Eastern Railroad, about 1½ miles from Tempe and 10 miles from Phoenix. This plant began operations in December, 1906. It is located in Creamery because of the abundance of raw milk in the vicinity, and further, it is alleged, because there was railroad competition which gave assurance of fair freight rates. At that time Tempe was reached from Phoenix by the Phoenix & Eastern Railroad, which was then a Santa Fe property, and by the Maricopa & Phoenix Railway, a Southern Pacific line. In June, 1907, the Phoenix & Eastern was transferred to the Southern Pacific and merged with the Maricopa & Phoenix to form the Arizona Eastern Railroad. This change of ownership was accompanied by a cancellation of the through rate on condensed milk which had obtained from Creamery to Santa Fe points, and since then rates on condensed milk to all Santa Fe points have been combination rates made on Phoenix.

The table below shows the condensed-milk rates complained of, the lower rates at present effective, and the rates requested in case number 1795:

Rates from Creamery, Ariz.

To—	Distance.	Rates complained of.		Present rates.		Rates requested.	
		C. L.	L. C. L. ¹	C. L.	L. C. L. ¹	C. L.	L. C. L. ²
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Wickenburg, Ariz.....	63	35	43	24	31	20	30
Prescott, Ariz.....	146	77	89	58	69	31	51
Jerome junction, Ariz.....	164	79	98	60	75	33	54
Parker, Ariz.....	174	82	98	62	77	34	56
Ash Fork, Ariz.....	203	88	102	68	83	36	61
Williams, Ariz.....	226	100	115	75	94	37	62
Flagstaff, Ariz.....	260	106	134	75	100	39	63
Kingman, Ariz.....	318	106	167	75	130	44	67
Needles, Cal.....	380	106	200	75	140	44	67
Gallup, N. Mex.....	446	106	214	75	150	45	75
Searchlight, Nev.....	463	134	238	75	150	44	66
Ludlow, Cal.....	495	106	215	75	150	43	65
Albuquerque, N. Mex.....	604	106	214	75	150	50	75

¹ Carload minimum 36,000 pounds. ² Carload minimum 30,000 pounds.

The original complaint attacked the rates from Creamery, Ariz., to Flagstaff and Kingman, Ariz.; Searchlight, Nev.; Needles and Ludlow, Cal.; and Gallup and Albuquerque, N. Mex., on the ground that they were discriminatory as well as unreasonable. Much lower rates, it was alleged, were charged to these points from rival plants in California, Oregon, and Illinois than from Creamery. Indeed, some evidence was presented to show that the Santa Fe made its rates from Phoenix with a view to keeping the Creamery product out of Santa Fe territory so that it could get the longer haul from more distant producing points. In so far as the complaint is based on discrimination, we find that the evidence presented is not sufficient to support it. As the Commission has previously declared, to find a

carrier guilty of discrimination as between two competing points of origin, it must appear that such carrier participates, at least, in each of the movements between the two points of origin and the destination.

In view of all the evidence, however, we find the present rates on condensed milk from Creamery to points named above to be unreasonable. Since this complaint was filed the Santa Fe has opened a new and shorter route to the west via Wickenburg, Parker, and Cadiz, and this makes such points as Ludlow, Cal., Searchlight, Nev., and Needles, Cal., more directly accessible from Phoenix than formerly. The following joint rates, fixed on the basis of the new short-line mileage where it applies, are deemed to be just and reasonable:

Rates from Creamery, Ariz., to—	Carload rates per 100 pounds. ¹	Less than carload rates per 100 pounds
	Cents.	Cents.
Wickenburg, Ariz.....	24	31
Prescott, Ariz.....	40	52
Jerome junction, Ariz ...	44	58
Parker, Ariz.....	46	60
Ash Fork, Ariz.....	50	65
Williams, Ariz.....	51	66
Flagstaff, Ariz.....	53	68
Ludlow, Cal.....	57	74
Kingman, Ariz.....	58	76
Needles, Cal.....	59	77
Searchlight, Nev.....	61	78
Gallup, N. Mex.....	66	84
Albuquerque, N. Mex.....	75	98

¹ Carload minimum 30,000 pounds.

In case No. 1830 complaint was made of only one condensed-milk rate, that is the carload rate via both the Southern Pacific and the Santa Fe from Creamery to Los Angeles. This is the most important milk rate from Creamery because, as the evidence shows, Los Angeles is the principal market for the Creamery product. The complaint was based on the following comparison of rates at that time effective from rival producing points.

From—	Distance	Carload rate.	Carload, minimum.
	Miles.	Cents.	Pounds.
Creamery, Ariz., to Los Angeles, Cal.....	441	65	40,000
Richmond, Utah, to Los Angeles, Cal.....	896	55	30,000
Portland, Oreg., to Los Angeles, Cal.....	1,197	47.5	30,000
Kent, Wash., to San Francisco, Cal.....	940	38	30,000

Since the filing of this complaint, however, the rate adjustment has radically changed. The Richmond to Los Angeles rate has been increased to 97 cents, while the Creamery to Los Angeles rate has been reduced to 55 cents. Accordingly the principal ground of the complaint has been corrected. Under all the circumstances we do not find this rate to be unreasonable.

No. 1795.

MARICOPA COUNTY COMMERCIAL CLUB

v.

PHOENIX & EASTERN RAILROAD COMPANY ET AL.

Submitted December 29, 1911. Decided January 9, 1912.

Defendants' present rate on coal from Gallup, N. Mex., to Tempe and Mesa, Ariz., found to be unreasonable and a maximum joint rate prescribed for the future.

F. A. Jones and E. P. Costigan for complainant.

W. G. Barnwell, P. P. Hastings, E. W. Camp, and T. J. Norton for Santa Fe, Prescott & Phoenix Railway Company and Atchison, Topeka & Santa Fe Railway Company.

C. W. Durbrow, F. C. Dillard, and P. F. Dunne for Phoenix & Eastern Railroad Company and Southern Pacific Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The original petition in this case complained of a number of class and commodity rates which in part have been disposed of in previous opinions, and in part were waived at the hearing in October, 1911, so that only the rate on coal from Gallup, N. Mex., to Tempe and Mesa, Ariz., remains to be settled. The record shows that between 200 and 300 carloads of coal are shipped from Gallup to Phoenix and vicinity each year; hence these rates are of considerable importance to this district.

The history of this coal rate is as follows: For some time previous to June, 1907, there was a through rate of \$4.15 from Gallup to Tempe and Mesa, which also applied to all intermediate points on the Santa Fe, Prescott & Phoenix Railway and its operated lines south of Jerome Junction. At that time the Phoenix & Eastern Railroad, which carried the shipments from Phoenix to Tempe and Mesa, was transferred by the Santa Fe to the Southern Pacific. The through

rate was then canceled and a combination rate of \$4.95 went into effect. This caused so much dissatisfaction that the through rate of \$4.15 was reestablished. It is this rate that was attacked in the complaint. On December 27, 1911, a tariff became effective, again canceling the through rate of \$4.15 and leaving now effective combination rates, made up of a commodity rate into Phoenix and class rates from Phoenix to Mesa and Tempe.

Upon full investigation we are convinced that the rate of \$4.15 was excessive. We shall prescribe as a maximum for the future a joint rate of \$3.60 per ton and shall expect the carriers to adjust the intermediate rates on the basis of the rate prescribed. An order will be entered accordingly.

22 I. C. C. Rep.

No. 8015.

HEATH HARDWARE COMPANY ET AL
v.
PENNSYLVANIA RAILROAD COMPANY ET AL

Submitted April 5, 1911. Decided January 8, 1912.

Charges collected for the transportation of sheet iron in carloads from Youngstown, Ohio, to Monroe, N. C., and iron wire fencing in less-than-carload quantities from Monessen, Pa., to Lawrenceville, Va., not found to have been unreasonable, unjustly discriminatory, or unduly preferential.

G. M. Stephen for complainant.

Henry Wolf Biklé for Pennsylvania Railroad Company; Northern Central Railway Company; Philadelphia, Baltimore & Washington Railroad Company; New York, Philadelphia & Norfolk Railroad Company; and Pennsylvania Company.

R. Walton Moore for Seaboard Air Line Railway; Southern Railway Company; Richmond, Fredericksburg & Potomac Railroad Company; and Norfolk & Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The petition in this case was filed jointly on December 9, 1909, by the Heath Hardware Company, a corporation engaged in the hardware business at Monroe, N. C., and the Sledge & Barclay Company, a corporation engaged in the hardware business at Lawrenceville, Va. It is alleged that the charges collected by defendants for the transportation of sheet iron from Youngstown, Ohio, to Monroe, N. C., and of iron wire fencing from Monessen, Pa., to Lawrenceville, Va., were unreasonable, unjustly discriminatory, and unduly preferential. Reparation and the establishment of reasonable rates are asked. The complaint of the Sledge & Barclay Company was first presented to the Commission on April 8, 1909.

On October 7, 1909, the Heath Hardware Company ordered shipped from Youngstown to Monroe one carload of sheet iron, weighing 37,422 pounds, upon which charges amounting to \$168.40 were collected, based on a rate of 45 cents per 100 pounds. Between October 12, 1907, and June 24, 1908, Sledge & Barclay Company shipped

from Monessen to Lawrenceville five less-than-carload lots of iron wire fencing, aggregating 33,673 pounds, upon which charges amounting to \$162.94 were collected, based on rates of 48 and 49 cents.

With respect to the shipments of both complainants the same situation is involved. In each instance the published rate was collected, with the exception of one shipment of wire fencing, weighing 13,012 pounds, upon which a rate of 49 cents was assessed. The rate lawfully applicable was 48 cents, therefore there was an overcharge upon this shipment of \$1.30.

Joint class rates from the points of origin of these shipments in official classification territory to southeastern territory are governed by southern classification. Iron and steel articles, however, are not subject to this basis, as it is the custom in making rates upon such articles to apply the official classification to the gateway and the southern classification beyond. Through rates, where published, are ordinarily on this basis.

Defendants' tariff naming class rates between the points here involved specifically provided that such rates would not apply on iron and steel articles. In their tariff naming rates on iron and steel articles, sheet iron, and iron wire fencing were not included, but it was provided that, in order to make rates on similar articles not included in the list published in the tariff, certain proportional rates to the gateways should be used. Sheet iron, carloads, is rated fifth class in the official classification and sixth class in the southern classification. The fifth class rate from Youngstown to the Virginia cities was 20 cents per 100 pounds, and the sixth class rate, Virginia cities to Monroe, was 25 cents. The combination of these rates, 45 cents, was published as a through rate on sheet iron between these points, and this was the rate charged.

Iron wire fencing in less-than-carload quantities, is rated 20 per cent less than third class in official classification, and fifth class in southern classification. This makes a rate of 26 cents, Monessen to Virginia cities, and 22 cents beyond, or a combination rate of 48 cents, which, except as above noted, was the rate charged.

Complainants contend that the southern classification ratings should apply to the shipments in question between the points above mentioned, and that any rates on sheet iron in excess of 41 cents, which is the sixth class rate from Youngstown to Monroe, and on iron wire fencing in excess of 40 cents, which is the fifth class rate, Monessen to Lawrenceville, were unreasonable. It is further asserted that the rates charged were in excess of the commodity rates applicable to iron and steel articles specifically enumerated in defendants' tariff; which articles so enumerated, it is claimed, are similar to the articles which comprised the shipments under consideration.

While it is true that the application of southern classification ratings from the points of origin to destination would produce lower rates than were charged, the application of official classification ratings would produce materially higher rates. Through rates on iron and steel articles have never been based upon southern classification, and we do not see in complainants' argument sufficient reason for now disturbing rates that have been in existence for a long period of time.

In the list of articles taking the iron and steel rates are included such commodities as boiler iron, bridge iron, tank iron, wheels, and steel and iron wire, but there is nothing in the record from which we can conclude that there is a sufficient analogy between these articles and the articles comprising complainants' shipments to warrant us in ordering the latter grouped with the former.

Upon consideration of all the facts and circumstances we are of the opinion that the charges collected by defendants for the transportation of the shipments herein set forth are not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial. Upon receipt of advice that the overcharge of \$1.30, hereinbefore referred to, has been refunded, the complaint will be dismissed.

No. 3276.

PADUCAH COOPERAGE COMPANY

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

Submitted January 24, 1911. Decided January 8, 1912.

Defendant's rates for the transportation of stave and heading bolts between local points on its line are less, for similar distances, than between local points and Paducah, Ky.; *Held*, That said rates to Paducah are unreasonable so far as they exceed, for similar distances, the rates between local points.

Fleener, Campbell & Gordon for complainant.

R. Walton Moore and Merrel P. Callaway for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged at Paducah, Ky., in the manufacture and sale of cooperage stock. The material from which this stock is manufactured is obtained along the lines of railroads which reach Paducah from the south, particularly the Illinois Central and Nashville, Chattanooga & St. Louis. By petition, filed May 9, 1910, complainant alleges that the rates charged by the Nashville, Chattanooga & St. Louis Railway for the transportation of this material, known as stave and heading bolts, from points on defendant's line in Tennessee to Paducah, are unreasonable in themselves and discriminatory as compared with other rates on similar material published by the defendant company. The prayer is for the establishment of reasonable rates for the future.

Stave bolts are pieces of timber, ordinarily of oak, from which barrel staves are manufactured. To produce the stave bolt a log is cut to the proper length, about 36 inches. Sometimes before shipment the log is quartered and the bark removed, while at other times the stave bolt differs from a log only in that it is shorter. Heading bolts are somewhat shorter than stave bolts. About two-thirds of the stave and heading bolt is lost in the process of manufacture. It is said that one cord of oak bolts contains approximately 1,100 feet,

board measure, weighs 5,600 pounds, and produces about 600 staves, which weigh about 1,800 pounds.

Some of complainant's testimony is devoted to showing that its plant at Paducah is not operated at full capacity, as formerly, the reason assigned for this condition being that defendant's rates are unreasonable; and complainant asserts that it could not do business at a profit if it were dependent upon the Nashville, Chattanooga & St. Louis Railway for transportation of its material to Paducah. It clearly appears, however, that since the cooperage plant was erected at Paducah there has been a marked advance in the price of hardwood tracts in that vicinity. Complainant's president testified that timber of the kind used in the manufacture of staves and heading has become scarce and high in price, and that this advance has amounted to as much as 300 per cent in 10 years. When the plant was erected at Paducah the stave and heading bolts were ordinarily obtained within a radius of 50 or 75 miles, whereas complainant now finds it necessary to go as far as 200 miles for its material.

The following table shows in column 1 the distance from certain points on defendant's line to Paducah; in columns 2 and 3 defendant's rates for the transportation of stave bolts and logs for said distances between local points on its line, said rates not being applicable to junction points, of which Paducah is one; in column 4 the rates on stave bolts from the points named to Paducah; and in column 5, defendant's rates on lumber and staves to Paducah. As will be explained later, defendant's rates on stave bolts are lower between local points on its line than from local points to junction points, such as Paducah:

	1	2	3	4	5
	Distance.	Rates on stave bolts.	Rates on logs.	Rates on stave bolts.	Rates on lumber and staves.
	Miles.	Cents.	Cents.	Cents.	Cents.
Oaks, Ky.....	9	2.20	2	3	3
Elva, Ky.....	14	2.57	2.33	3.5	3.5
Iola, Ky.....	18	2.75	2.50	4	4.5
Benton, Ky.....	22	2.93	2.66	4.5	5
Glade, Ky.....	26	3.12	2.8	5	6
Hardin, Ky.....	30	3.30	3	5	6.5
Dexter, Ky.....	32	3.30	3	5.5	6.5
Almo, Ky.....	35	3.48	3.16	5.5	7
Murray, Ky.....	41	3.67	3.33	6	7
Hazel, Ky.....	49	3.85	3.50	6	7
Puryear, Tenn.....	53	4.03	3.66	6.5	7
Whitlock, Tenn.....	59	4.22	3.8	6.5	7
Van Dyke, Tenn.....	71	4.77	4.33	7.5	7.5
Mansfield, Tenn.....	75	4.95	4.5	7.5	7.5
Vale, Tenn.....	81	5.13	4.66	7.5	7.5
Hollow Rock Junction, Tenn.....	86	5.32	4.8	8	8
Camden, Tenn.....	95	5.68	5.16	8	8
Johnsonville, Tenn.....	104	5.87	5.33	8.5	9
Denver, Tenn.....	106	6.06	5.5	8.5	9
Waverly, Tenn.....	114	6.23	5.66	8.5	9
McEwen, Tenn.....	124	6.60	6	9	9
Tennessee City, Tenn.....	131	6.97	6.33	9	9
Pond, Tenn.....	136	7.15	6.5	9	9
Dickson, Tenn.....	139	7.15	6.5	9	9

	1	2	3	4	5
	Distance.	Rates on stave bolts.	Rates on logs.	Rates on stave bolts.	Rates on lumber and staves.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Pomona, Tenn.....	144	7.33	6.66	9.5	10
Tidwell, Tenn.....	146	7.52	6.8	9.5	10
Iron Hill, Tenn.....	148	7.52	6.8	9.5	10
Bon Aqua, Tenn.....	150	7.70	7	9.5	10
Lyle, Tenn.....	154	7.70	7	9.5	10
Brown, Tenn.....	161	8.07	7.33	9.5	10
Graham, Tenn.....	162	8.07	7.33	9.5	10
Nunnally, Tenn.....	164	8.07	7.33	9.5	10
Goodrich, Tenn.....	166	8.22	7.5	9.5	10
Grinders, Tenn.....	169	8.22	7.5	9.5	10
Centerville, Tenn.....	172	8.43	7.66	9.5	10
Twomey, Tenn.....	173	8.43	7.66	9.5	10
Buffalo, Tenn.....	179	8.62	7.8	9.5	10
Etna, Tenn.....	182	8.80	8	10	10
Kimmins, Tenn.....	185	8.98	8.16	10	10
Hohenwald, Tenn.....	192	9.17	8.33	10	10
Nancy, Tenn.....	199	9.35	8.50	10	10
Riverside, Tenn.....	200	9.53	8.66	10	10
Allens Creek, Tenn.....	202	9.53	8.66	10	10
Average.....	113	6.25	5.67	7.98	8.4

Defendant's assistant general freight agent, who was its only witness, testified that its rates on stave and heading bolts, hardwood lumber, and forest products have been maintained at practically the same level for many years. Originally such rates were established, with logs as a basis, at a rate of \$5 per car of 30,000 pounds for 5 miles, and for longer hauls this rate was increased in proportion to the mileage. The log rates being thus established, the rates on stave bolts and other kindred articles were made a percentage higher than those on logs. Subsequently rates in cents per 100 pounds were substituted for rates per car. Later transit rates were published to junction points on defendant's line, such as Paducah, Ky., Chattanooga, Tenn., etc., a certain proportion of the inbound rate to the junction point being refunded upon shipment of the manufactured product out from the junction point over defendant's line. Defendant asserts that these transit rates were established for the purpose of getting back, for an outbound haul, some of the inbound tonnage which the line produced. They applied from stations not exceeding 150 miles from the junction points. An exhibit shows that the drawback or reduction in rate from all points within 150 miles of the junction points (Paducah, Ky., Memphis, Tenn., Nashville, Tenn., Chattanooga, Tenn., and Huntsville, Ala.) averaged 1.6 cents per 100 pounds, or 17.2 per cent of the inbound rate. The average gross rate to the junction point was 8.76 cents per 100 pounds, while the average net rate, after allowing the drawback, was 7.08 cents per 100 pounds.

In 1908, following certain correspondence with the Commission respecting the form of tariffs in which transit rules were published,

all transit rates to junction points were withdrawn by defendant and flat rates established in lieu thereof, without any condition attached thereto respecting the shipment of outbound tonnage. After the transit privilege was abolished the old gross rates were not continued in force, but a new scale was adopted which was less than the old gross rates and slightly higher than the transit rates. The average of the old net rates, for distances from 9 to 203 miles, was 7.482 cents, while the average of the present scale of rates for all such distances is 7.94 cents, showing an average advance of 4.58 mills per 100 pounds; or, expressed in percentage, an advance of 6.12 per cent over the net transit rates. In the new scale of flat rates there was no advance from stations over 150 miles from Paducah, while from stations 150 to 3 miles distant from Paducah the increase per 100 pounds ranges from one-eighth to seven-eighths of a cent. The new scale of rates was applied alike to Paducah, Memphis, Huntsville, Nashville, and Chattanooga.

Complainant has called particular attention to the rates to Paducah on stave and heading bolts from points on the Illinois Central. That road maintains transit rates to Paducah on stave and heading bolts under an arrangement whereby it refunds down to basis of the transit rates on four carloads of inbound bolts upon the outbound shipment over its line of one carload of staves or heading. The following table shows the gross inbound rates to Paducah from Illinois Central stations and the net or transit rates which are applied upon reshipment of the manufactured product:

To Paducah from—	Distance.	Stave bolts and heading lumber.	Logs.	Stave bolts and heading for reshipment.	
				Distance.	Rate.
	Miles.	Cents.	Cents.		Cents.
Mayfield, Ky.....	23	8	4	25 miles and over 20.....	13
Water Valley, Ky.....	39	8	4½	40 miles and over 30.....	24
Sharon, Tenn.....	64	10	10	70 miles and over 60.....	34
Jackson, Tenn.....	110	10	10	120 miles and over 100.....	44
Covington, Tenn.....	129	10	10	150 miles and over 125.....	5
Grand Junction, Tenn.....	156	12	12	160 miles and over 150.....	5½
Holly Springs, Miss.....	181	12	12	190 miles and over 180.....	5½
Hernando, Miss.....	190	13	13	190 miles and over 180.....	5½
Taylor, Miss.....	218	13	13	220 miles and over 200.....	6½
Batesville, Miss.....	227	13	13	240 miles and over 225.....	6½

Per Illinois Central tariff, I. C. C. No. 4086, for each pound of manufactured product shipped outbound from Paducah, Ky., refund will be made on not more than the number of pounds of raw material inbound shown below:

When the manufactured product is—	And the raw material shipped in is—	Pounds.
Heading.....	Logs and bolts.....	4
Staves.....	Logs and bolts.....	4

By comparison with the table already given, showing rates on defendant's line, it will be observed that the gross rates of the Illinois Central are considerably in excess of defendant's rates for similar distances, while the net or transit rates are somewhat less than those of defendant. It is to be remembered, however, that in each instance where the Illinois Central applies the transit rate it receives the out-bound shipment of the manufactured product and frequently obtains a long haul from Paducah, reaching, as it does, over its own rails, such markets as Louisville, Chicago, Omaha, New Orleans, and Birmingham.

As a comparison with defendant's rates on stave bolts it calls attention to certain rates on lumber fixed by the Commission in *Commercial Club of Omaha v. C. & N. W. Ry. Co.*, 19 I. C. C. Rep., 156. In that case the rate ordered in by the Commission from Omaha, Nebr., to Mahaska, Kans., on the Chicago, Rock Island & Pacific, 139 miles distant, is 9 cents, while from Tennessee City, Tenn., to Paducah, 131 miles, the Nashville, Chattanooga & St. Louis' rate on stave bolts, lumber, and staves is 9 cents: from Omaha, Nebr., to Courtland, Kans., 165 miles, 11 cents, while from Buffalo, Tenn., to Paducah, 179 miles, defendant's rate is 9.5 cents on stave bolts and 10 cents on lumber and staves: from Omaha, Nebr., to Lebanon, Kans., 202 miles, 12.5 cents, while from Allens Creek, Tenn., to Paducah, 203 miles, the Nashville, Chattanooga & St. Louis' rate on stave bolts, lumber, and staves is 10 cents.

Defendant's testimony is that in fixing its rates on forest products it must consider the conditions surrounding the traffic along its own line, and these conditions are somewhat peculiar. It is stated that the main line of the road extends from Hickman, Ky., to Chattanooga, Tenn., with numerous branches south of Nashville, Tenn., extending into the mountains of the Cumberland plateau, and with a branch from Dickson, Tenn., extending south over what is known as the Centerville branch, and the line operated by it under lease from Paducah, Ky., to Memphis, Tenn. Originally the entire line may be said to have been a hardwood timber line. From Johnsonville, Tenn., on the main line just east of the Tennessee River, to a short distance beyond Nashville, the line traverses a rocky and gravelly ridge. From Dickson, the junction point of the Centerville branch, it traverses a rocky country. Forty miles below Nashville the line begins to ascend through another rocky section and continues through a rocky formation until it reaches Chattanooga. The branch lines very largely extend through mountainous country. For these reasons defendant says that the lands are not suitable for agricultural purposes, and that when the timber is removed the lands can not successfully be and are not cultivated. It asserts that a railroad built through a timber country susceptible of high agricultural

development can afford to, and generally does, make rates on timber that result in its quick removal in order that the agricultural development may proceed as rapidly as possible; but that a line built through country such as that traversed by the defendant, where the timber, when once cut, is not replaced in tonnage by the products of the field and agricultural development, should make its rates with that fact in view, of course taking into account its legal duty to establish its schedule upon a plane that will allow the ready movement of forest products at reasonable rates, and insure the development of its hardwood manufacturing enterprises and a profitable market for the raw material. Defendant asserts that such a condition has been enjoyed by owners of timber lands, manufacturing enterprises, and hardwood dealers along its line.

As will be noted by reference to the table first given, the rates charged by defendant for the transportation of stave and heading bolts between local points on its line are less, distance considered, than the rates charged for the transportation from local points to junction points. Defendant's witness testified that the rates at local stations were established essentially as proportional rates; that is, as a part of through rates from the point of origin of the raw material to the ultimate destination of the finished product, and that the rate on the raw material from the point of origin to the local factory, taken in connection with the outbound rate on the finished product, made up an aggregate of what was considered by defendant as a fair through rate from point of origin to final destination. There is no transit arrangement at these local points, but the effect of these local rates was assumed to be similar to a transit arrangement and avoided the billing of the property at one rate, collection of the charges upon that rate, and refund to basis of a lower rate when the traffic was re-shipped from the local point. Defendant has filed an exhibit showing a comparative statement of charges on stave bolts inbound and staves outbound from local points on its line, based on 3 pounds of raw material inbound to 1 pound of staves outbound. This exhibit shows that from stave-bolt originating points situated equally distant from the local stave-bolt manufacturing plants on defendant's line and from Paducah, the aggregate cost of moving the raw material into the local point and out as a finished product to the final destination is, generally speaking, higher than a similar combination upon Paducah.

Upon consideration of all the evidence of record we find no reason for ordering defendant to establish transit rates at Paducah or for requiring it to publish flat inbound rates which will be as low as the transit rates of the Illinois Central. The conditions surrounding the movement of traffic over the two lines are substantially dissimilar. The Illinois Central may be of opinion that the mainte-

nance of transit rates is to its interest; but if so, this affords no reason for requiring the Nashville, Chattanooga & St. Louis Railway to take similar action.

Complainant also contends that the rate on stave and heading bolts should not exceed the rate on logs, and there appears to be more force in this argument than in its comparison with the Illinois Central rates. When the stave bolt, before shipment, has not had the bark removed and is not quartered it is different from a log only in the matter of length, and it is perhaps an unnecessary refinement of classification to establish one set of rates for the transportation of logs and another set of rates for the transportation of stave and heading bolts. However this may be, we would not be justified in requiring a reduction of the rates on bolts to the present rates on logs in the absence of a showing that the rates on bolts are unreasonable. Merely upon a showing that they are a similar article of traffic our order would be limited to prescribing a rate on bolts not in excess of the rate on logs, and this might be obeyed by increasing the rate on logs as well as by a reduction of the rate on bolts.

However, there is no justification, from a transportation standpoint, for the maintenance of rates on bolts to Paducah higher than the rates for similar distances between local points on defendant's line. As a matter of business policy, it may be considered that this adjustment is to its interest, but there is nothing in the record which indicates that the carriage of bolts to Paducah is more expensive than the carriage of bolts for a similar distance to a local point. The rates to the local points, having been voluntarily established by defendant and maintained for many years, we must assume that they afford adequate compensation for the service performed. We find, therefore, that defendant's rates for the transportation of stave and heading bolts from the points on its line in Tennessee, set forth in the first table shown in this report, are unreasonable so far as they exceed, for similar distances, the rates between local points on its line. Defendant will be required to cease and desist from charging their present rates for the transportation of stave and heading bolts to Paducah and to establish in lieu thereof rates which are not in excess, for similar distances, of the rates charged contemporaneously between local points on its line. An order will be entered accordingly.

The present rates between local points are named as *mileage rates*, and the order will require defendants to establish rates from these local points to Paducah in line with said mileage schedule. An inspection of the tariffs will show that such an order is sufficiently specific and definite, and the only thing that could be done further would be to tabulate all the stations and prescribe specific rates on the above basis. This, we think, might well be left to defendant to carry out.

No. 3328.

CHAMBER OF COMMERCE OF CITY OF AUGUSTA, GA.,
v.
SOUTHERN RAILWAY COMPANY ET AL

Submitted April 10, 1911. Decided January 8, 1912.

Complainant alleges that defendants' rate of \$2.10 per ton on coal from the Coal Creek mines in Tennessee to Augusta, Ga., is unreasonable in itself and unduly prejudicial as compared with rates from said mines to other points in the same general territory as Augusta; *Held*, That the present rate from the Coal Creek mines to Augusta is not shown to be unreasonable, nor does it appear that coal consumers at Augusta are thereby subjected to undue disadvantage.

E. G. Kalbfleisch and John B. Daish for complainant.

Nelson W. Proctor for Louisville & Nashville Railroad Company.

Claudian B. Northrop for Southern Railway Company.

M. P. Callaway for Atlantic Coast Line Railroad Company and Georgia Railroad.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation whose membership is composed of merchants and manufacturers of the city of Augusta, Ga. In its petition, filed June 16, 1910, it alleges that the rate on coal from the Coal Creek mines, in Tennessee, to Augusta is unjust and unreasonable in itself, and, as compared with rates to other designated points in the same general territory, subjects the manufacturers of Augusta to undue prejudice and disadvantage.

Augusta is largely a manufacturing city. A number of its industries are engaged in the manufacture of various kinds and grades of brick. There are eight brick plants with an annual output of from 50 to 60 million brick. Tile and sewer pipe are manufactured to considerable extent. Cotton mills, iron manufactories, and other industries of various kinds are also located in or near the city. These industries are in competition with similar enterprises located at other points, especially Macon, Athens, and Atlanta, Ga. For some of the plants water power is furnished by the city through means of a canal

connected with the Savannah River, constructed many years ago. This power has been insufficient in recent years for the increasing demands upon it, and new industries are dependent upon fuel coal.

The movement of coal into Augusta for the year ended June 30, 1910, was about 76,000 tons, and was from the following sources of supply, in the proportions stated: From the Coal Creek mines in Tennessee, about 45,000 tons; from the Pocahontas mines in Virginia, about 30,000 tons; and from other mines, including the Birmingham field in Alabama, about 1,000 tons. The coal from the Birmingham field is not as desirable for steam purposes as that from either of the other points named.

Of the mines in the Coal Creek or Tennessee field, those located on the Southern Railway are known as Group 7, and those located on the Louisville & Nashville Railroad are known as the Wind Rock group. The rate from each group to Augusta is the same, and for convenience both groups are herein referred to under the general designation of Coal Creek mines. Since October 1, 1907, the rate from these mines to Augusta has been \$2.10 per ton of 2,000 pounds. Prior to that date the rate had been \$2.05 per ton, for a number of years.

Complainant contends that the rate of \$2.10 per ton is of itself unreasonable. It is urged that coal is a cheap commodity, capable of heavy loading, an article of necessity, and should therefore have the lowest rate possible; also that earnings under the existing rate are more than sufficient to cover the cost of service and produce a reasonable profit. The evidence does not show the cost of service, the capital invested, or the amount of earnings required to cover said cost and insure a reasonable return upon the investment. The burden of proof was with complainant, and yet counsel are apparently satisfied, as to this phase of their contention, to rest upon the statement in the brief that "there does not appear to be any necessity, as far as the financial requirements of the carriers are concerned, for the maintenance of the present rate." The answer to this is that a rate can not be adjudged unreasonable merely because the carriers did not submit evidence to show their "financial requirements" to be such as to justify its maintenance.

It is true that coal is a commodity that loads heavily, and it is also an article of necessity, but these considerations simply argue that it should have a reasonable rate of transportation. The question here is whether the rate of \$2.10 per ton is unreasonable. Complainant's evidence bears upon the question in a relative, rather than in a direct, sense. Emphasis is laid chiefly upon the fact that rates to competitive points are lower than the rates to Augusta, by reason whereof it is claimed that the location of new industries at Augusta is discouraged, and the growth and progress of the city impeded.

The distance from the Coal Creek mines to Augusta is 404 miles via the Louisville & Nashville, and 367 miles via the Southern. In each case 5 miles are allowed for gathering service at the mines. Taking the shorter line as the basis, the \$2.10 rate produces revenue of 5.7 mills per ton per mile. To the principal competitive points named in the petition the distances and rates from the Coal Creek field are as follows: To Macon, Ga., the distance is 320 miles and the rate \$1.80 per ton, or 5.6 mills per ton per mile; to Athens, Ga., the distance is 306 miles and the rate \$1.90 per ton, or 6.2 mills per ton per mile; to Atlanta, Ga., the distance is 233 miles and the rate \$1.35 per ton, or 5.9 mills per ton per mile. Gauged by the ton-mile earnings the rate to each of the points named, except Macon, is higher than the rate to Augusta. To Macon it is one-tenth of a mill lower than to Augusta.

A comparison of the Coal Creek-Augusta rate with rates from the Birmingham field to the stated competitive points shows a situation still less favorable to complainant's contention. From the Birmingham mines the showing is as follows: To Macon the distance is 275 miles and the rate \$1.65 per ton, or 6 mills per ton per mile; to Athens the distance is 260 miles and the rate \$1.75 per ton, or 6.7 mills per ton per mile; to Atlanta the distance is 187 miles and the rate \$1.20 per ton, or 6.4 mills per ton per mile.

The distance from the Birmingham mines to Augusta is 358 miles, allowing a gathering distance of 20 miles. The rate is \$1.95 per ton, or 5.4 mills per ton per mile, as compared with the Coal Creek-Augusta rate of 5.7 mills per ton per mile. Gauged by the same standard, rates from the Coal Creek mines to other consuming points in Georgia and the Carolinas are higher than the Augusta rate. To 14 Georgia points, not including the points here directly involved, having an average distance of about 360 miles from Coal Creek, the average rate is \$2.10 per ton, or 6.1 mills per ton per mile. To nine given points in North Carolina and South Carolina, having an average distance of about 260 miles from Coal Creek, the average rate is \$2.10 per ton, or about 8.3 mills per ton per mile.

Under the rate adjustment applying generally throughout the southeast, Augusta, Macon, Athens, and Atlanta are all embraced within that portion of the territory to which rates from Coal Creek mines take a differential of 15 cents per ton higher than rates from the Birmingham mines. This adjustment is the result of compromises between the competing carriers, and has existed without change for many years, dating back perhaps as far as 1894. There can be no doubt that the Coal Creek-Augusta rate, and other rates referred to as well, are the result of competition between the carriers serving the various coal-producing fields. While the cost of operation was not a matter of inquiry at the hearing, the evidence shows

that the service from the Coal Creek mines represents expensive transportation over heavy mountainous grades.

In *Rice v. Georgia R. R. Co.*, 14 I. C. C. Rep., 75, the question of the reasonableness of a rate of \$2.20 per ton from the Jellico mines to Augusta, Ga., was involved. The Jellico mines are in Tennessee, at a greater distance from Augusta than the Coal Creek group. Their output moves to Augusta through Coal Creek and is transported over the same lines as the product of the Coal Creek mines. The rate, which produced revenue of 5.5 mills per ton per mile, was held not to be unreasonable. The facts in this case are not essentially different from the facts in that case, and there has been no material change in the rate situation since.

In *Board of Trade of Winston-Salem, N. C., v. N. & W. Ry. Co.*, 16 I. C. C. Rep., 12, the Commission established a rate on coal from Pocahontas, Va., to Winston-Salem, a distance of 255 miles, of \$2.10 per ton, or 8.2 mills per ton per mile. In *Victor Mfg. Co. v. S. Ry. Co.*, 21 I. C. C. Rep., 222, the Commission established a rate of \$1.85 per ton, producing revenue of 7.8 mills per ton per mile, for the transportation of coal from the Coal Creek mines to Spartanburg, S. C., a distance of 235 miles.

Complainant further contends that the Coal Creek-Augusta rate, as compared with rates to Macon, Athens, Atlanta, and Savannah, Ga., where competing industries are located, subjects the city of Augusta and its manufacturing enterprises to undue disadvantage. It asks that a rate of \$1.80 per ton be established.

As already shown, the distances and rates from the Coal Creek mines to the points stated, except Savannah, are less than the distance and rate to Augusta. To Macon, the distance is 47 miles less and the rate 30 cents less. To Athens, the distance is 61 miles less and the rate 20 cents less. To Atlanta, the distance via the Louisville & Nashville is 171 miles less and the rate is 75 cents less. These rates are all the result of competition between the Birmingham fields served by the Alabama railroads and the Tennessee fields served by the Tennessee railroads, dating back to the time when the differential of 15 cents per ton, hereinbefore referred to, was established. The distances from the Birmingham mines are as follows: To Macon 275 miles, to Athens 260 miles, and to Atlanta 187 miles. In each case the rate is a differential of 15 cents per ton lower than the rate from the Coal Creek mines.

Moreover, it appears that the competitive points named get a considerable portion of their coal supply from mines other than those in the Coal Creek and Birmingham fields. A great deal of coal used by industries at Macon is shipped from mines in Virginia at a rate of \$2.15 per ton; and some of the industries at that point get their coal from mines in Tennessee other than those at Coal Creek. At Athens,

also, coal is largely obtained from sources other than the Coal Creek mines. Some of the manufacturing industries at that point receive coal from mines in Kentucky and southwest Virginia and from the Jellico mines in Tennessee, whence the rates are higher than from Coal Creek. It also appears that the bulk of steam coal consumed at Atlanta is brought from mines in southwest Virginia and that the rates are higher than from Coal Creek, notwithstanding the proximity of Atlanta to the Coal Creek and Birmingham fields. The rate from Coal Creek to Savannah is 10 cents lower than to Augusta, while the distance is considerably greater. Defendants assert that the rate to Savannah is controlled by active water competition for the carriage of coal to that point from Virginia fields. There is no water competition of consequence for the carriage of coal to Augusta, and none at any of the other competitive points.

It appears that rates from Coal Creek are based on the Birmingham rates with an added differential of 15 cents per ton. This applies not only to the points here in question, but to all points within the same differential zone. As Birmingham is approached from the east the differential against Coal Creek increases, first to 25 cents, then to 45 cents, and finally to 70 cents. The reasonableness of this differential adjustment was involved in *Alabama Coal Operators Asso. v. S. Ry. Co.*, 21 I. C. C. Rep., 230. It was there complained that the 15 and 25 cent differentials were unreasonably low and unjustly discriminatory in favor of Coal Creek and against the producers of the Birmingham field. The Commission held that the adjustment was not shown to be unreasonable or unjustly discriminatory and dismissed the petition. The decision in that case disposes of the attack here made upon the adjustment and upon the Birmingham rates as applied to the 15-cent differential zone.

If the present relationship of rates is to be maintained, a reduction in the Coal Creek-Augusta rate can not be made without corresponding reductions in rates from other producing points to Augusta. Rates to Augusta from eastern Tennessee mines other than Coal Creek, and from mines in Kentucky, also, are made with relation to the rate from Coal Creek, and consequently any material reduction in the rate as is here insisted upon would involve reductions in the rates from the other points. The rates from the southwest Virginia mines to Augusta take a differential of 25 cents per ton higher than the rate from Coal Creek to Augusta, which latter, as we have seen, carries a differential of 15 cents per ton higher than rates from the Birmingham mines. Any change in the Coal Creek-Augusta rate, therefore, would necessitate corresponding changes in rates from the southwest Virginia mines; also from the Birmingham mines, and from various other groups of mines taking differentials higher than the Birmingham rates to Augusta, such as mines on the Nashville,

Chattanooga & St. Louis, and Cincinnati, New Orleans & Texas Pacific railroads, which also send coal into the Georgia territory.

It is argued by counsel for complainant that the rate to Augusta is in violation of the provisions of section 4 of the act to regulate commerce because it is higher than the rate in effect from Coal Creek to Charleston, S. C. No issue, under section 4, is raised by the petition, and the matter was not a subject of inquiry at the hearing. The evidence does not show to what extent, if at all, coal moves from the Coal Creek mines through Augusta to Charleston. Manifestly this question can not be determined upon the present record.

The adjustment of rates on coal in the Georgia territory, as related to the provisions of said section 4, is now before the Commission upon application by each of the carriers, defendants in this case. The applications include the rate to Augusta, and the question will be considered and decided upon those applications.

Upon the phases of the controversy directly involved, we are of opinion and find, in view of all the circumstances and conditions stated, that complainant's allegations of unreasonableness as to the rate to Augusta, and of undue prejudice because thereof, are not well founded, and are not sustained. The petition must, therefore, be dismissed, and an order will be entered accordingly.

22 I. C. C. Rep.

No. 3388.

NORMAN LUMBER COMPANY ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted March 16, 1911. Decided January 8, 1912.

Upon complaint alleging that defendants' rates for the transportation of hardwood lumber from points south of the Ohio River to Louisville, Ky., and other Ohio River crossings, subject lumber dealers at Louisville to undue disadvantage, *Held*:

1. That no sufficient reason has been shown why rates from points on defendants' lines should be higher to Louisville than to Cairo, Ill., for substantially similar distances, and defendants' tariffs should be amended accordingly.
2. That the present adjustment of rates as between Louisville and Cairo from points on the Illinois Central and Yazoo & Mississippi Valley Railroads south of Memphis, Tenn., does not result in undue preference of Cairo.
3. That upon the present record no conclusion can be reached respecting the allegation that the present system of so-called bridge arbitraries or tolls subjects Louisville to undue disadvantage.

Hines & Norman for complainants.

R. Walton Moore and *M. P. Callaway* for Illinois Central Railroad Company; Southern Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Nashville, Chattanooga & St. Louis Railway; Alabama Great Southern Railroad Company; and Georgia Southern & Florida Railway Company.

Attila Cox, jr., for Illinois Central Railroad Company.

W. A. Northcutt for Louisville & Nashville Railroad Company.

Edward Barton for Baltimore & Ohio Southwestern Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainants in this case are engaged in the purchase, sale, and shipment of hardwood lumber, and have their main offices and yards at Louisville, Ky. By petition, filed July 13, 1910, they complain that the rates upon hardwood lumber from points in southern territory to Louisville, Ky., are unjust and unreasonable, and unduly

prejudicial to the interests of Louisville as a hardwood lumber market. It is alleged that in order to market hardwood lumber there must of necessity be points of concentration where lumber may be sorted, graded, and reconsigned; that Louisville, Ky., has for many years been a concentration point for lumber produced in the states of Kentucky and Tennessee; that the supply of hardwood lumber in Kentucky and Tennessee, which is naturally tributary to Louisville, is becoming exhausted, and that in order to supply their demands Louisville dealers are compelled to look in other territories, principally in Georgia, Alabama, Mississippi, and Arkansas, for their supply of lumber; and that the rates on hardwood lumber from points in said states to Louisville, added to the rates from Louisville to points north and east thereof, are such as to preclude the operation of lumber yards at Louisville in competition with yards at other Ohio River crossings and Memphis, Tenn. It is further alleged in the complaint that Memphis, Tenn., has been accorded a yarding-in-transit privilege as to hardwood lumber, and that this privilege constitutes undue preference of Memphis over Louisville.

A large number of exhibits have been filed and have been carefully examined. It is at once evident that a complaint of this nature involves thousands of rates, and that it is somewhat difficult to select those which are typical of the entire situation. Although the complaint alleges that the rates north of Louisville, as well as those to the south, are unreasonable, substantially no evidence as to the rates north of the Ohio River was submitted at the hearing, and on the argument counsel for complainants stated:

We think the rates are fairly well lined up in central freight association territory through these gateways, except that Louisville has a 1-cent differential on account of the bridge, which, as I said before, we think is justified. They [the lines north of the Ohio River] perform an additional service and ought to be paid for it. The discrimination is on the southern lines coming into Louisville.

In the evidence and exhibits submitted the principal stress seems to be placed upon the rates to Cairo as compared with those to Louisville, a very small amount of evidence having been introduced as to the rates to other Ohio River crossings. In the case of *Sondheimer v. I. C. R. R. Co.*, 17 I. C. C. Rep., 60, the Commission determined upon the proper relationship of rates as between Cairo and Memphis, and the rates approved by the Commission are now in force. It would seem to follow that if the proper relationship of rates now exists between Cairo and Memphis, and the Commission can determine the proper relationship of rates as between Louisville and Cairo, such action would dispose of any alleged discrimination in favor of Memphis, as well as in favor of Cairo.

Before discussing in detail the rates of which complaint is made, it is proper to consider one of the allegations relating to the alleged preference of Memphis over Louisville. The carriers permit lumber to be brought into Memphis from points beyond, to be there unloaded from cars, stored in distributing yards, and sorted and graded, with privilege of reshipment out of Memphis to ultimate destination north of the Ohio River at rates which are less than the combination of rates upon Memphis; that is to say, the Memphis dealer who desires to take advantage of the transit privilege pays the full local rate from the point of origin into Memphis, and upon reshipment of the lumber to a point north of the Ohio River pays 1 cent per 100 pounds less than the rate from Memphis to said point of ultimate destination. In some instances this results in giving the Memphis dealer the same rate as the through rate from the point of origin of the lumber to the point of ultimate destination, while in other cases the shrinkage of 1 cent is not sufficient to make the Memphis reconsignment rate equal to the through rate from point of origin.

No such transit arrangement has been granted to Ohio River crossings, for the following reason: In the development of traffic from points south of the Ohio River to points north thereof the rates ordinarily "broke," as it was called, at the Ohio River; that is to say, the southern lines published a rate up to the river, the northern lines a rate beyond; and the through rate from any point in the south to any point in the north was made by adding these two rates together. Therefore on such a combination of intermediate rates a dealer at the river can bring lumber to his yards, pay the rate therefor, keep it as long as he pleases, and send it on in any form he desires. It follows that there was no reason why the carriers should grant a transit privilege at the Ohio River, for if the combination of rates into and out of Louisville or Cairo is no greater than the rates through Memphis under the reconsigning privilege, it is obvious that the dealer at the river has an advantage in that he is not subjected to any of the restrictions of the reconsignment rules.

It seems to us, therefore, that no cause exists for the establishment of a transit privilege at Louisville; but if the rates into and out of Louisville are such that the present reconsignment privilege gives undue advantage to Memphis, the best way to correct that violation of law is by fixing a proper relation of rates as between Memphis and Louisville; and, as we have already stated, a proper conclusion can best be reached by comparing the Louisville rates with the Cairo rates, it being conceded that Memphis and Cairo are now upon a proper relative basis.

Considerable confusion seems to have arisen in the testimony by reason of the fact that in the past the carriers south of the Ohio River have frequently published two rates to Cairo, one to Cairo proper

and another and lower rate to Cairo "for beyond." Some of the exhibits compare the rate to Cairo "for beyond" with the rate to Louisville proper. However, the rate to Cairo "for beyond" can not be used by a Cairo dealer who desires to remove his lumber from the cars at Cairo and subsequently reship it to points north; the rate to Cairo "for beyond" is simply a proportional rate used in making through rates from certain points in the south to certain points in the north.

In the cases of *Tift v. S. Ry. Co.*, 10 I. C. C. Rep., 548, and *Central Yellow Pine Asso. v. I. C. R. R. Co.*, 10 I. C. C. Rep., 505, the rates on yellow-pine lumber from points in southern Georgia, Alabama, and Mississippi to Ohio River crossings were before the Commission. In those cases it was shown that from the lumber-producing territory in Arkansas and Louisiana there were territorial blanket rates to Cairo, and that the producing territory in Arkansas and Louisiana was less distant from the Ohio River at Cairo than was the southern lumber-producing territory, upon the average, from the Ohio River crossings—Cincinnati, Louisville, Evansville, and Cairo. To the rates up to Cairo from Arkansas and Louisiana the railroads north of the river added arbitraries from Cairo to points of destination in central freight association territory and trunk line territory, the combination of said rates to Cairo and from Cairo constituting through rates from Arkansas and Louisiana to points in the northeast. The railroads extending from Georgia, Alabama, and Mississippi to Ohio River crossings, for the purpose of rendering possible the movement of lumber from that section into central freight association territory in competition with yellow pine from Arkansas and Louisiana, found it necessary to meet the rates from the latter States. This was accomplished by putting into effect so-called basing rates from points in Georgia, Alabama, and Mississippi to Cairo which equaled the rates in effect from Louisiana and Arkansas to said points. The arbitraries of the railroads north of the Ohio River from Cairo, added to these basing rates from Georgia, Alabama, and Mississippi, produced total through rates equal to the through rates from Arkansas and Louisiana. In establishing the rates to Cairo from southern points, east of the Mississippi River, the railroads did not contemplate that the traffic should actually move via Cairo. The publication of the rates to Cairo was merely a convenient method for determining through rates to points of destination in central freight association territory. In view of the amendment to the law, which required stricter application of rates, the carriers have since published joint through rates from substantially all points in the south to all points in the north. These rates have ordinarily been made up by using the lowest combination through any of the Ohio River crossings. A number of so-called basing rates to Cairo "for be-

yond " are still in existence, but it seems that the only practical reason for their continuance is to provide a basis for rates to points to which joint through rates have not been published.

The contention in this case is that the lumber dealer at Cairo has an undue advantage over the lumber dealer at Louisville. The dealer who desires to treat lumber at Cairo can not use the proportional rate to Cairo any more than he could use the joint through rate from the southern point to the northern destination, and it follows that the proper comparison is between the rates to Cairo proper and the rates to Louisville.

Complainants' contention in the main is placed upon three grounds. They claim, first, that from points on defendants' lines the rates to Cairo and to Louisville ought to be the same where the distance is substantially the same. Second, the present rate from Memphis to Louisville is 12 cents per 100 pounds, and the rate to Cairo 10 cents per 100 pounds. From certain points south of Memphis on the Illinois Central and the Yazoo & Mississippi Valley railroads the differential between Cairo and Louisville is greater than 2 cents, and complainants contend that from all such points the differential in favor of Cairo ought not to exceed 2 cents. Third, complainants assert that they are subjected to undue disadvantage because a bridge toll of 1 cent per 100 pounds is added to the rate from the north bank of the Ohio River to make the rate from Louisville, while the other Ohio River crossings—Cairo, Evansville, and Cincinnati—being on the north bank of the Ohio River, pay no bridge toll on outbound shipments, and on inbound shipments no bridge toll is added to their rates by the southern lines.

The following table shows the rates from a number of representative shipping points in the south to Cairo proper, and "for beyond," to Louisville, Evansville, and Cincinnati, with the distances and resulting revenue per ton per mile to each point:

22 I. C. C. Rep.

Statement showing distances and rates per ton per mile on oak lumber, c. l., from various southern points as named to Ohio River crossings.

From—	To Cairo, Ill.				To Louisville, Ky.				To Evansville, Ind				To Cincinnati, Ohio.			
	Proper.		For beyond.		Distance.	Rate per 100 pounds.	Rate per ton per mile.	Distance.	Rate per 100 pounds.	Rate per ton per mile.	Distance.	Rate per 100 pounds.	Rate per ton per mile.	Distance.	Rate per 100 pounds.	Rate per ton per mile.
	Miles.	Cents.	Miles.	Mills.	Miles.	Cents.	Mills.	Miles.	Mills.	Mills.	Miles.	Cents.	Mills.	Miles.	Cents.	Mills.
Brewton, Ga.	606	20½		4.7	657	21½	6.5	651	22½	6.9	677	23½	6.9	677	23½	6.9
Chattanooga, Tenn.	353	13		7.4	316	13	8.2	310	13	8.4	336	13	7.7	336	13	7.7
Cardale, Ga.	624	19		4.8	616	20	6.5	610	21	6.9	636	22	6.9	636	22	6.9
Cullman, Ala.	353	14		10.0	340	17	10.0	312	18	11.5	450	19	8.4	450	19	8.4
Deatsville, Ala.	419	14		8.8	471	17	7.2	443	18	8.1	581	19	6.4	581	19	6.4
Decatur, Ala.	341	13		6.8	308	13	8.4	280	14	10.0	418	16	7.6	418	16	7.6
Dickson, Tenn.	150	13		16.3	229	15	13.1	201	15	14.9	339	19	11.2	339	19	11.2
Harahan, Ga.	529	14		5.0	502	17	6.8	496	18	7.2	522	19	7.3	522	19	7.3
Memphis, Tenn.	169	10		11.8	377	12	6.4	349	11	6.3	487	15	6.3	487	15	6.3
McComb, Miss.	444	14		6.3	673	19	5.7	591	20	6.7	783	21	6.4	783	21	6.4
Nashville, Tenn.	310	10		10.0	187	9	9.6	159	10	12.6	297	13	8.8	297	13	8.8
Newnan, Ga.	514	14		5.4	514	17	6.6	471	19	7.6	497	19	7.7	497	19	7.7
Oxford, Miss.	213	13		12.2	438	16	7.3	356	16	9.0	549	19	6.9	549	19	6.9
Pickens, Miss.	327	14		8.6	552	17	6.2	470	17	7.2	662	21	6.0	662	21	6.0
Rome, Ga.	674	14		6.0	437	15	6.9	431	15	6.9	457	15	6.6	457	15	6.6
Sequatchie, Tenn.	538	17½		10.3	325	18	11.8	297	17½	11.8	435	17½	8.0	435	17½	8.0

As to complainants' first proposition, no good reason has been shown to the Commission why Louisville should pay a higher rate than Cairo for the transportation of lumber from points of origin which are substantially equidistant from both cities. The justice of this contention seems to have been conceded by defendant Louisville & Nashville Railroad Company. At the time of the hearing the rates from points on the Louisville & Nashville south of Decatur, Ala., were higher to Louisville than to Cairo; for instance, the rate from Deatsville, Ala., was 14 cents to Cairo and 17 cents to Louisville; from Bluff Springs, Fla., 16 cents to Cairo and 19 cents to Louisville. The general freight agent of the Louisville & Nashville Railroad Company explained that this difference in favor of Cairo arose from the erroneous publication of a rate to Cairo proper which was the same as the basing or proportional rate to Cairo; that prior to the decision in the *Tift* and *Central Yellow Pine cases, supra*, the rate to Cairo had been raised to equal the Louisville rate, but was reduced to the former basis as the result of the decisions in those cases. Since the hearing herein the rate to Cairo proper from stations south of Decatur has been advanced and the Cairo rate is now the same as the rate to Jeffersonville, New Albany, and Evansville; that is, 1 cent per 100 pounds higher than the Louisville rate. This tariff was made effective January 22, 1911; and, as applied to the stations above mentioned, it results in a rate of 17 cents from Deatsville to Louisville and 18 cents from Deatsville to Cairo; 19 cents from Bluff Springs to Louisville and 20 cents from Bluff Springs to Cairo.

Complainants' second contention, that the rates to Louisville from points south of Memphis on the Yazoo & Mississippi Valley and Illinois Central railroads should not in any case exceed the rate to Cairo by more than 2 cents, does not appear to be well founded. By reference to the table above inserted, it will be seen that the rate from Memphis to Cairo proper yields revenue of 11.8 mills per ton per mile, while the rate of 12 cents to Louisville yields revenue of 6.4 mills per ton per mile. The rate from McComb, Miss., to Cairo proper is 14 cents and to Louisville 19 cents, but it will be noted that the 14-cent rate to Cairo yields revenue of 6.3 mills per ton per mile, while the 19-cent rate to Louisville yields revenue of 5.7 mills per ton per mile. The same relative revenue per ton per mile appears to obtain from other points south of Memphis where the differential in favor of Cairo exceeds 2 cents, and upon this record we are unable to find that the present rates to Louisville are unreasonable or unduly prejudicial. It was testified by the witness on behalf of the Illinois Central that the differential of 2 cents between Cairo and Louisville from Memphis is less than is justifiable upon a mileage basis; that is to say, the distance from Memphis to Cairo

is 169 miles, to Louisville 377 miles, or a difference in favor of Cairo of 208 miles. Defendant claims that the difference of 2 cents is not sufficient to compensate for the additional service performed in the transportation to Louisville, but that this adjustment has been forced by reason of the competition of the rail carriers with transportation by water up the Mississippi and Ohio Rivers, and that such competition does not exist with respect to points which are not upon the Mississippi River.

On the other hand, it will be noted that the rate from Rome, Ga., to Cairo proper is 14 cents, and the distance 474 miles; while the rate from Rome to Louisville is 15 cents, and the distance 437 miles. No sufficient reason has been shown why the rate from Rome, Ga., and points of which it is typical should be greater to Louisville than to Cairo. Based upon the rate from Rome to Cairo, the rate to Louisville ought not to exceed 13 cents. From Wildwood, Ga., to Cairo the distance is 362 miles and the rate 16 cents. To Louisville the rate is 16 cents and the distance 324 miles. Based upon the rate from Wildwood to Cairo, the rate to Louisville ought not to exceed 15 cents.

Upon consideration of all the facts of record it is our conclusion that the rates to Louisville from points on the lines of defendants ought not to be higher for substantially similar distances than the rates to Cairo; and that Louisville is subjected to undue prejudice at least so far as rates to that city are greater for substantially similar distances than the rates to Cairo.

The matter of the bridge toll remains to be considered. The contention of the Louisville lumber dealers may best be shown by using a typical rate; for instance, the rate from Wildwood, Ga., to Cairo and Louisville is 16 cents, the distance to Cairo being 362 miles and to Louisville 324 miles. The rate from Cairo to Chicago is 10 cents for a distance of 365 miles and from Louisville 11 cents for a distance of 295 miles. The rate from Evansville, Ind., to Chicago, a distance of 287 miles, is 10 cents. In other words, when hauling traffic north from Louisville the northern lines add 1 cent to their rate from the north bank of the river to cover the estimated expense of maintenance and operation of the bridge, and this addition of 1 cent to the rate from the north bank of the river is the so-called bridge toll. The illustration above given shows that on a shipment from Wildwood, Ga., treated in the yards at Louisville and then shipped out to Chicago, the combination of the rates in and out is 27 cents, while through Cairo it is 26 cents.

Complainants admit that the roads north of the river are entitled to 1 cent per 100 pounds on account of the bridge service out of Louisville. They contend, however, that if the northern lines are to add 1 cent on outbound shipments the Louisville dealers ought to pay

1 cent less on inbound shipments than the crossings on the north bank of the river reached by the southern lines; otherwise Louisville is at a disadvantage of 1 cent per 100 pounds for which no transportation reason exists. As we understand it, no separate charge is made by the carriers south of the Ohio River for the service across the bridge, but the lines south, on traffic carried to northern destinations through Evansville and Cairo, add an arbitrary to what would otherwise be their proportion of the joint through rate. There can be no doubt that Louisville, on the south bank of the river, ought not to pay inbound a rate which is sufficient to cover the transportation of traffic to the north bank of the river, and then, when reshipping the traffic to the north, again pay an amount sufficient to cover the transportation across the bridge. In other words, Louisville ought not to be considered on the north bank of the river on inbound shipments and on the south bank of the river on outbound shipments.

In *Freight Bureau of Cincinnati v. C., N. O. & T. P. Ry. Co.*, 7 I. C. C. Rep., 180, the Commission found that the location of Cincinnati upon the north bank of the Ohio River, and the fact that railroads leading south must cross that river over expensive bridges for which an arbitrary or toll is charged, or allowed in the division of rates, justified some higher differential from Cincinnati over rates from Louisville, on the south bank of the river, to destination points in so-called "Montgomery and southwestern territory." The difficulty in determining this question arises from the fact that the bridges are now for the most part owned by the railroad companies or their subsidiary companies and no separate charge is made to the public for the use of the bridge. In hauling traffic to Cairo and Louisville from a point equidistant from both those cities, at the same rate, it is obvious that the carriers perform a greater service for the Cairo dealer by reason of transporting his traffic across the bridge. As we understand it, in the adjustment of interline accounts between carriers an expensive bridge is ordinarily considered as constructive mileage and the division of joint rates made upon that basis.

Upon the present record we can not say, for instance, that from points equidistant from Louisville and Cairo the rate to Louisville should be 1 cent less than to Cairo. There is no evidence in the record which indicates the added expense of moving traffic to Cairo by reason of the use of the bridge at that point, and any relative adjustment as between Louisville and Cairo based upon the fact that one is upon the south and the other upon the north bank of the river would necessarily have to take into consideration not only the amount which the carriers charge each other in their interline accounts for the use of the bridge, but the actual cost of transporting the traffic across the bridge; and any result so obtained might be subjected to modification by reason of the fact that the bridges are

owned or operated by different carriers and perhaps upon different terms. The record does not indicate by whom the several bridges are owned and operated, and other facts essential to a conclusion upon this point, and therefore we shall not attempt to dispose of that matter at this time.

As we have stated, it is our opinion that from points on defendants' lines which are equidistant, or substantially so, from Cairo and Louisville, the rates to Louisville ought not to exceed the rates to Cairo, and that from other points of origin the differences in rates to Cairo and Louisville should be proportionate with the difference in distance, and the best disposition of the case seems to be to request the defendants to enter upon a revision of their tariffs which shall produce this result. In the present state of the record it would be difficult to enter an order which would be of any benefit to complainants, for the reason that a great many of the points from which they ship, or desire to ship, and respecting which rate comparisons have been instituted in the record, are on the lines of roads which are not parties defendant, and because any order made at this time might be subject to modification upon further investigation of the matter of bridge tolls. Moreover, the points set forth in the exhibits which are on the lines of defendants are said to be merely typical and are only a small fraction of the total number of points involved. We deem it best, therefore, to make no specific order at this time. It is expected that the defendant carriers will at once enter upon a revision of their tariffs in accordance with the views herein set forth. If such action should not be taken, the complainants may apply for reopening of the case, bring in all necessary parties defendant, and set forth in detail the points respecting which an order should be entered in accordance with the foregoing conclusions.

Complainants ask for reparation and at the hearing filed a considerable number of expense bills in support of their claim; but they have not attempted to show to what extent, if any, they were damaged in connection with the shipments covered by the expense bills submitted, and they were not in a position to do so in advance of this decision. Therefore, no opinion is expressed respecting the matter of reparation, and that part of the case will be held awaiting such action as complainants may deem proper. The petition also attacked, in a general way, the rates from points west of the Mississippi River in Louisiana and Arkansas to Louisville, but the evidence in respect thereto is so meager that no conclusion can be reached upon the record and no opinion is expressed.

Commissioner McCHORD took no part in the decision of this case.

No. 3574.

BROOK-RAUCH MILL & ELEVATOR COMPANY

v.

**ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.**

Submitted March 24, 1911. Decided January 8, 1912.

Charges for necessary out-of-direct-line service on shipments of grain and grain products from Omaha, Nebr., to Conway and Morrilton, Ark., with transit privileges at Little Rock, Ark., found not to be unreasonable or unduly prejudicial. Complaint dismissed.

R. T. Brook for complainant.

James C. Jeffery for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the grain and milling business at Little Rock, Ark. Its petition, filed October 8, 1910, alleges that it has been charged unlawful and unreasonable rates for transportation of grain and grain products from points in Nebraska and Kansas to Little Rock, and other points taking Little Rock rates and arbitraries higher; and by reason thereof has been subjected to undue prejudice.

Complainant's mill is on the tracks of the St. Louis, Iron Mountain & Southern Railway, at Little Rock, and it does an extensive milling-in-transit business. Most of its grain supply is shipped over defendants' lines from Omaha, Nebr., and other grain markets on the Missouri River. Its mill products are sold largely at near-by points in Arkansas, on the lines of the St. Louis, Iron Mountain & Southern, among which are Conway and Morrilton to the west, and Beebe, Earle, Helena, Marianna, Forrest City, Wynne, and other points to the east and northeast, between Little Rock and Memphis, Tenn.

Missouri Pacific-Iron Mountain tariff, I. C. C. No. A-970, effective July 1, 1909, names a proportional rate on corn, and articles taking corn rates, of 18 cents per 100 pounds, from Omaha to Little Rock and to each of the other points referred to. By Missouri Pacific-Iron Mountain joint circulars, I. C. C. No. A-1228, effective November 19, 22 I. C. C. Rep.

1909, and I. C. C. No. A-1618, effective September 24, 1910, transit privileges are accorded shipments of grain and grain products at various milling points, including Little Rock, and it is provided that the joint rates from points of origin to points of destination in effect when the shipments originated shall be applied.

On shipments entitled to transit privileges at Little Rock complainant has been required to pay, in addition to the 18-cent rate, certain out-of-line-haul charges, which, it is alleged, are unreasonable and higher than are authorized by the tariffs.

Since the filing of this petition, by supplement effective October 24, 1910, to the said joint circular, I. C. C. No. A-1618, defendants have eliminated from the transit privilege at Little Rock the out-of-line-haul charges to all the points east and northeast of Little Rock. The chief controversy in the case, therefore, is whether the out-of-line-haul charges on shipments destined to Conway and Morrilton are unreasonable or otherwise unlawful.

The milling-in-transit tariffs referred to provide that transit privileges on shipments moving out of direct route shall be subject to extra charges for the additional distances traversed, as follows: For 40 miles and over 5 miles, 1 cent per 100 pounds; for 60 miles and over 40 miles, 1½ cents per 100 pounds; for 80 miles and over 60 miles, 2 cents per 100 pounds; and for 100 miles and over 80 miles, 2½ cents per 100 pounds. These rules are still in force. The distance from Little Rock to Conway is 30 miles and to Morrilton 50 miles.

Complainant contends that as the rate from Omaha to both Conway and Morrilton is the same as the rate to Little Rock, the extra charges for out-of-line-haul should be based on the actual distance from Little Rock to each of said points—that is, on 30 miles, or 1 cent per 100 pounds to Conway; and on 50 miles, or 1½ cents to Morrilton. The extra charges collected under the tariffs are 1½ cents to Conway and 2½ cents to Morrilton.

The tariffs provide that in assessing these extra charges the difference between the mileage a shipment actually travels via the transit point and the mileage via the shortest route, from point of origin to destination, shall be considered the mileage of the out-of-line haul, the distances to be determined by Missouri Pacific Official Distance Table, I. C. C. No. 7624, and effective supplements thereto. By this table the short-line distance from Omaha to Conway is 695 miles, via Coffeyville, Kans., while the distance over the route via the transit point is 738 miles, a difference of 43 miles, for which the out-of-line-haul charge is 1½ cents per 100 pounds. By the same short-line route the distance from Omaha to Morrilton is 675 miles, while the distance over the route via the transit point is 758 miles, a difference of 83 miles, for which the out-of-line-haul charge is 2½ cents per 100

pounds. It thus appears that the charges which defendants collect on shipments to Conway and Morrilton, with transit privileges at Little Rock, are in accordance with the tariffs in force.

It is not contended that these extra charges are unreasonable except on the theory that only the actual distance out of Little Rock should be counted the out-of-line haul as to each of said points. We do not regard the theory suggested as meritorious. Shipments destined to either point, without transit privilege at Little Rock, would naturally move over the shorter line, via Coffeyville, and in that event the entire haul would be 675 miles to Morrilton or 695 miles to Conway. To insure to complainant the benefit of the transit privilege at Little Rock as to such shipments, defendants would be required to make an actual extra haul of twice the distance out of Little Rock; that is, an actual extra haul into Little Rock and out again, or 100 miles as to Morrilton and 60 miles as to Conway. If this actual extra distance were counted as the basis of the out-of-line-haul charges, complainant would not be any better off, for in that event the extra charges would be the same as now collected under the tariffs.

If it be assumed that under the transit tariffs shipments destined to Morrilton or Conway move over the route via Carthage, Mo., and the White River division, the actual extra distance to Conway via Little Rock would be 43 miles, and the actual extra distance to Morrilton would be 83 miles. These are the extra distances which form the basis of the out-of-line-haul charges under the method adopted by defendants, as shown by the tariffs referred to. Under all the circumstances we can not find that the charges for the extra service occasioned by the out-of-line haul as to either Conway or Morrilton are unreasonable or subject complainant to undue prejudice.

There is sharp conflict in the evidence as to whether the extra charges formerly collected on shipments destined to the points east and northeast of Little Rock were unreasonable or discriminatory. The record is not in condition to enable us to reach a satisfactory conclusion on that question, and as those charges have been eliminated from the tariffs and no reparation is asked on account of past transactions, the matter need not be here further considered. The petition must be dismissed and an order will be entered accordingly.

No. 3897.

FAIRMONT CREAMERY COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

Submitted November 20, 1911. Decided January 8, 1912.

A rate of 32 cents per 10-gallon can of cream from Concordia, Kans., to Crete, Nebr., not found to have been unreasonable. Complaint dismissed.

Hainer & Smith for complainant.

R. B. Scott for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the purchase of cream and manufacture of butter, with headquarters at Omaha, Nebr. By petition, filed March 3, 1911, it alleges that an unreasonable rate was charged by defendant for the transportation of cream in 10-gallon cans from Concordia, Kans., to Crete, Nebr., during the period from March 1 to September 5, 1909. Reparation is asked.

During the summer of 1906 complainant established at Concordia a concentration plant for the handling of cream carried by rail lines to that point and reshipped over defendant's line to Crete, where it is manufactured into butter. The defendant, at the same time, established a special rate of 20 cents per 10-gallon can of cream, in lots of 100 cans or more, shipped from Concordia to Crete by passenger train. This special rate was continued in force until March 1, 1909. On that date the rate was advanced to 32 cents, without limitation as to the number of cans shipped. On September 5, 1909, the special rate of 20 cents was restored, with an increase of the number of cans in each shipment to 150 during the summer months, the minimum remaining at 100 cans from October to March of each year. This rate is still in force. Complainant contends that the rate of 32 cents was unreasonable, and points to the maintenance of the 20-cent rate since 1906, with the exception of the six-month interval above noted, as conclusive evidence of this contention.

Ordinarily the advance of a rate for a short period, followed by restoration and maintenance of the lower rate formerly in force, tends to raise a presumption of fact that the advanced rate was unreasonable. In the present case there are certain facts that modify this presumption. The special rate was put in effect in the first instance at the solicitation of complainant. According to the testimony of complainant's witness, he called upon an official of the defendant carrier and explained that considerable quantities of cream were passing through Concordia on the lines of other carriers destined to competing creameries, and that, with a sufficiently low rate, he could divert a part of that business over the Chicago, Burlington & Quincy Railroad to Crete. The defendant, he explained, could get not only the haul to Crete, but the benefit of the increased movement of butter out of Crete. Defendant's witness testified that the rate was made to "scalp" the business on the other connecting lines at Concordia, and was fixed, not as compensatory in itself, but in consideration of the increased butter movement out of Crete.

In January, 1909, the order of the Commission in *Beatrice Creamery Co. v. I. C. R. R. Co.*, 15 I. C. C. Rep., 109, was issued. That case involved the rates charged for carriage of cream to centralizing creameries in the territory extending from Detroit and Port Huron on the east to Colorado common points on the west, and complainants sought the establishment of a so-called 33-cent scale. After an exhaustive review of the situation a scale of rates, based on mileage, somewhat higher than the 33-cent scale, was found by the Commission to be reasonable for the transportation of cream to these centralizing creameries; and these rates, known as the Beatrice scale, have since been generally adhered to in that section of the country.

When the Beatrice scale was put in effect by the Chicago, Burlington & Quincy Railroad the special rate of 20 cents from Concordia to Crete was withdrawn in order that the application of the Beatrice rates might be uniform throughout the system. Defendant's general freight agent testified that the 20-cent rate under consideration in this case was the only special rate he knew of on the Chicago, Burlington & Quincy lines west of the Missouri River, except two intrastate rates fixed by the Nebraska state commission. This establishment of the Beatrice scale fixed the rate from Concordia to Crete, 122.6 miles, at 32 cents. Under the 33-cent scale, which was rejected by the Commission as being unreasonably low, this rate would have been 26 cents.

Upon this advance of the rate complainant protested to the carrier; and, this being ineffectual, withdrew its business, so far as possible, from the Burlington system. Apparently the traffic so lost was of such volume that defendant considered that its interest

would be subserved by restoration of the 20-cent rate, and it acted accordingly. The low rate was, in the first instance, voluntarily established by defendant; whether it was compensatory or not, in view of the profits on the butter traffic, was a question for the carrier to consider at that time. Having led complainant to adjust its business to the conditions thus created, that rate was not lightly to be set aside.

It will be recalled that in the *Beatrice Creamery case, supra*, the Commission rejected the 33-cent rate as unreasonably low. Under that scale the rate between Concordia and Crete would have been about 33 per cent higher than the rate here sought to be enforced. In stating the reasons for the rejection of those rates, the Commission said:

• • • It is conceded that at the time of their [the 33-cent scale rates] inauguration this whole territory west of the Missouri River was in distressed circumstances. There had been repeated crop failures, and the price of what had been produced was extremely low. There was no money in the country, and the people were leaving it. The dairy industry seemed to offer a means of providing some small amount of ready cash and of initiating a business which subsequently might be of great benefit to the country. In this view the railroads cooperated with these centralizers in the establishment of these rates in order that the centralizer might be able to present to the farmer a proposition sufficiently attractive to insure his acceptance.

• • • But they [the railroads] urge that this has not been done under the supposition that the rates charged for the carriage of this cream were compensatory, but in order to build up an industry which would benefit the country and therefore indirectly benefit them. The facts are as claimed by the defendants, and there is very great force in the contention which they put forward.

It is to be noted that the defendant in the present case has no such plea to offer in its behalf. The rate was voluntarily established, not to create business that did not exist, but to divert business already in existence; not to enable the sale of cream that had no market, for the cream was already moving over other lines to other creameries; not in any way for the benefit of the farmer or the general public, but to benefit the parties to this action, complainant and defendant individually. The question here is whether a carrier, having voluntarily put in a rate that is relatively low, is bound to maintain that rate indefinitely.

In the *Beatrice Creamery case*, the Commission condemned as unreasonably low a scale yielding a rate for this haul materially higher than that here sought to be enforced, and prescribed a scale of rates more than 50 per cent higher than this 20-cent charge. To hold that defendant may not withdraw a rate found by the Commission to be unreasonably low, merely because that rate was voluntarily established in the first place, would amount to requiring unjust preference

of complainant, and to setting aside the fundamental principle that rates must be uniform under similar conditions.

The reestablishment of the rate of 20 cents after an interval of but six months remains to be considered. Complainant refers to this reinstatement as voluntary, but the evidence is that the rate was restored in order to avoid the loss of other and more profitable business than that which moved under it. In view of all the facts of record, we are unable to find that a rate of 32 cents was unreasonable. It follows that the complaint must be dismissed, and it will be so ordered.

No. 8746.

EDWIN D. JOHNSON

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAIL-
WAY COMPANY.

Submitted March 15, 1911. Decided January 8, 1912.

Upon the facts appearing of record, the rate complained of in this petition covers a service performed wholly within the state of Wisconsin, and therefore is not subject to the act to regulate commerce. Complainant's remedy, if any, is by petition to the proper authority of the state of Wisconsin.

Edwin D. Johnson for complainant in person.

No appearance for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a wholesale lumber merchant, with principal place of business at Chicago, Ill. By petition, filed December 27, 1910, he alleges that he was charged an unreasonable rate for the transportation in July and August, 1909, from Ingram, Wis., to Stevens Point, Wis., of two carloads of lumber, which was stopped at the latter point for dressing and then reshipped to Chicago and Maywood, Ill. Prayer is for reparation on the specific shipments and the establishment for the future of a reasonable "dressing-in-transit" rate via Stevens Point.

On July 19, 1909, complainant shipped from Ingram to Stevens Point a carload of lumber weighing 55,000 pounds, and on August 5, 1909, a carload weighing 51,400 pounds. Neither bill of lading showed any destination beyond Stevens Point; both were consigned to a third party, whose connection with the transaction does not appear in the record; and both were apparently unloaded at Stevens Point. On August 10, 1909, complainant shipped from Stevens Point to Chicago a car of lumber weighing 44,600 pounds, and on August 12 a carload to Maywood, Ill., weighing 39,100 pounds. The bills of lading for the inbound cars bear notation "for dressing in transit." Bills of lading issued to cover the shipments from Stevens Point bear the notation "dressed in transit," and give reference, respectively, to the inbound cars mentioned. Apparently no charges were paid at Stevens Point, as the destination expense bills purport to cover charges into as well as from Stevens Point. The car to Maywood was consigned to complainant; the one to Chicago was billed to a third party by whom the charges were presumably paid. Charges were assessed at a rate of 10 cents on the rough weight into Stevens Point and a like rate on the dressed weight from Stevens Point to destination. The complaint is directed solely to the portion of the rate assessed for the movement into Stevens Point.

Complainant contends that a rate of 10 cents from Ingram to Stevens Point, a distance of 122 miles, was unreasonable because at the time the carrier maintained a rate of $11\frac{1}{2}$ cents from Ingram to Chicago, a distance of 379 miles, and because the rate from Stevens Point to Chicago, a distance of 257 miles, was only 10 cents. Complainant also urges that the 10-cent rate from Ingram to Stevens Point is unreasonable and discriminatory because, as asserted in the petition, defendant "also published and observed a 'dressing-in-transit' rate on lumber from Ladysmith, Wis., to Stevens Point of $4\frac{1}{2}$ cents per 100 pounds." Ladysmith is on the direct line between Ingram and Stevens Point, and only 14 miles less distant from the latter point than Ingram.

Defendant filed an answer to the petition in which it admits—that the shipments moved as alleged in the fourth paragraph of said petition, and admits the overcharge therein mentioned, and submits the matter to the Commission for authority to refund as requested by complainant.

A letter of record, signed by defendant's vice president, states that—

on March 5, 1910, this Company having acquired the Wisconsin Central Railway, issued from its local stations, including Ingram, rates to Stevens Point for dressing and reshipment, making the rate $4\frac{1}{2}$ cents, and said rate is still in effect.

Another letter from one of defendant's officers states that the rate has been advanced from $4\frac{1}{2}$ to $5\frac{1}{2}$ cents.

Neither the 4½-cent nor the 5½-cent "dressing-in-transit" rate from Ladysmith and Ingram has ever been filed with this Commission, and therefore it could not lawfully be used in connection with a shipment destined outside of Wisconsin. When these shipments moved defendant had on file with this Commission a tariff, naming both state and interstate rates, which showed a 10-cent rate from both Ladysmith and Ingram to Stevens Point, and those rates have not been changed by any tariff filed with the Commission. No tariff filed with the Commission authorized a shipment from Ingram, the ultimate destination of which was without the state of Wisconsin, to be dressed in transit at Stevens Point.

In this connection our attention has been called to Soo Line circular 597, filed with this Commission July 16, 1906, and canceled January 31, 1911, which reads as follows:

After necessary arrangements covering details have been perfected, shipments of lumber, posts, poles, etc., may be stopped at intermediate points for concentration, dressing, etc., and reshipment via our line, at an additional charge of two (2) cents per 100 pounds, to cover the extra service.

Section 6 of the act to regulate commerce after requiring that carriers shall file with the Commission and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation provides further that such schedules—

shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, *and shall also state separately* all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, *all privileges or facilities granted or allowed* and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee.

Based on section 6 of the act, the Commission by rule 10 of tariff circular 18-A provides—

If such privilege is granted or charge is made in connection with the rate under which the shipment moves from point of origin, the initial carrier's tariff which contains such rate must also show the privilege or the charge or must state that shipments thereunder are entitled to such privileges and subject to such charges according to the tariffs of the carriers granting the privileges or performing the services, as "lawfully on file with the Interstate Commerce Commission."

This requirement of rule 10 is first contained in tariff circular 15-A, effective April 15, 1908, and has been continued in all subsequent tariff circulars.

The shipments moved from Ingram on July 19, 1909, and August 5, 1909. Neither the tariff naming the rate charged for the movement from Ingram to Stevens Point, nor the tariff naming the through rate from Ingram to Chicago, stated that transit privileges would be

allowed at Stevens Point, or that shipments under such tariffs were entitled to transit privileges—

according to the tariffs of the carriers granting the privileges or performing the services, as lawfully on file with the Interstate Commerce Commission.

It appears, therefore, that to hold that circular 597 of the Soo road was applicable to the shipments in question would clearly be contrary to the provisions of section 6 of the act.

As has been noted, the bills of lading for the transportation from Ingram did not indicate that the shipments were to move to points outside of Wisconsin. The transportation service called for by the bills of lading was wholly completed when the cars were delivered at Stevens Point, and the shipment of the dressed lumber from that point constituted a new transaction, which, under the tariffs in force, could have no relation to or effect upon the movement into Stevens Point or the rates charged therefor. It follows that the rate complained of in this petition was for a service performed wholly within the state of Wisconsin, and therefore is not within the jurisdiction of this Commission. Complainant's remedy, if any, is by petition to the proper authority of the state of Wisconsin. The complaint must be dismissed, and it will be so ordered.

22 I. C. C. Rep.

No. 3964.

MINNEAPOLIS TRAFFIC ASSOCIATION OF THE CITY OF
MINNEAPOLIS

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY ET AL.

Submitted December 1, 1911. Decided January 8, 1912.

Class rates from Minneapolis to Denver found to be unreasonable and lower rates ordered.

T. A. McGrath and Hugh E. White for complainant.

George P. Lyman for Chicago, Burlington & Quincy Railroad Company.

James B. Sheean, George W. Peterson, and E. B. Ober for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

F. C. Dillard, H. A. Scandrett, and J. A. Monroe for Union Pacific Railroad Company.

J. D. Armstrong for Great Northern Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complaint in this case is that the present class rates from Minneapolis, Minn., to Denver, Colo., are unjust in and of themselves and discriminatory as compared with class rates from St. Louis, Mo., and Chicago, Ill. The present class rates between the points named in cents per 100 pounds are as follows:

Class rates to Denver, Colo., and common points.

From—	Class.									
	1	2	3	4	5	A	B	C	D	E
Chicago and common points.	Cents. 180	Cents. 145	Cents. 110	Cents. 85	Cents. 67	Cents. 80½	Cents. 63	Cents. 54	Cents. 47	Cents. 40
Minneapolis	180	145	110	85	67	80½	63	54	47	40
St. Louis and common points.	162	127	101	80½	63	74	56	50	42	36

In obedience to the order of the Commission in the so-called *Kindel case*, 15 I. C. C. Rep., 555, the roads leading from Chicago and 22 I. C. C. Rep.

St. Louis reduced their class rates to Denver, with the result that for a short time the rates from Minneapolis were higher than from Chicago. To-day the rates from Minneapolis and Chicago are the same. Minneapolis now asks that her rates be reduced to the St. Louis basis, and, as a reason why they should be, sets forth the rates which have existed in the past from these points, from which it appears that for 12 years there existed practically the same rates from Minneapolis as from St. Louis, the Chicago rates being higher. The distance from Minneapolis is less than from either Chicago or St. Louis.

A hearing was had, at which considerable testimony was introduced by manufacturers located in Minneapolis to the effect that under the present rate adjustment they were unable to compete with similar enterprises located in St. Louis and at points taking the St. Louis rate. We do not think it necessary to go into this evidence in detail. It may be noted in passing, however, that at the present time these defendant carriers publish commodity rates from Minneapolis to Denver which enable the former city to compete with St. Louis, this being simply an evidence of what the history of the class rates themselves show.

The vice president of the Union Pacific in charge of traffic appeared and made no serious opposition to the complaint, but stated in substance that the matter had not been adjusted before because his company did not believe it was good policy to grant the relief asked for, since it would constitute an acquiescence in and approval of the principle announced by the Commission in the *Kindel case, supra*.

From a full consideration of all the facts and circumstances as disclosed by this record, we are of the opinion and find that the present rates applicable to the first 10 classes as now published from Minneapolis to Denver are excessive and unreasonable and should not exceed the following:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	182	127	101	80½	63	74	58	50	42	36

We further find that the class rates from Minneapolis ought not to exceed those from St. Louis.

An order will be entered in accordance with the above findings.

22 I. C. C. Rep.

No. 4346.

WHITELAND CANNING COMPANY

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY ET AL.

Submitted November 10, 1911. Decided January 8, 1912.

Advanced rates applicable to shipments of evaporated milk from Whiteland, Ind., to points in central freight association territory not found to be justified. Old rates ordered restored.

Henley, Matson & Gates for complainant.

A. P. Burgwin for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; Cleveland, Akron & Cincinnati Railway Company; Cincinnati, Lebanon & Northern Railway Company; Pennsylvania Terminal Railway Company; and Pittsburgh, Chartiers & Youghiogeny Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The question for determination in this case concerns the reasonableness of the present rates on shipments of evaporated milk in less-than-carload lots, in what is known as central freight association territory as served by certain specified carriers.

The Whiteland Canning Company, the complainant, has a canning establishment located on the line of the Pittsburgh, Cleveland, Cincinnati & St. Louis Railway at Whiteland, Ind., where it cans, among other things, evaporated milk. It alleges that the action of the defendants in this territory in increasing the rate applicable to this commodity is unjust and results in the imposition of an unreasonable rate, which is denied generally by the carriers made defendants, embracing the Pennsylvania lines west of Pittsburgh and the Pittsburgh & Lake Erie Railroad Company.

Since 1887, when the official classification was first filed with this Commission, condensed milk has been classified by that classification as third class. In recent years what is known as evaporated milk has come upon the market, it being given the same rating. On or about November 15, 1909, the manufacturers of evaporated milk in central

freight association territory called the attention of the carriers to the fact that certain special rates were being made in trunk line territory, which resulted in giving to evaporated milk a rate less than third class, whereupon the carriers filed an exception to the official classification, naming a rate on less-than-carload shipments of 20 per cent less than third class, which resulted in giving to central freight association manufacturers practically as good a rate on their shipments as was enjoyed by those located in trunk line territory. On June 1, 1911, this exception was omitted, which resulted in again making applicable the third class rating, being an increase of from 4 to 15 cents per 100 pounds upon shipments of complainant. The only reason much insisted upon by the defendants as justifying the increased rates was the action taken by carriers in trunk line territory in withdrawing their special rates.

The complainant has only been engaged in canning this commodity about a year and a half, and testified that up to the present time nothing had been realized from the sale of it, the margin of profit being small and his customers few.

The difference between evaporated and condensed milk is found in the density of the liquid, while no sweetening is used in the former. It takes the place of fresh milk where that article can not be had. Being sterilized, it can be kept indefinitely. The milk is put up in cans of two sizes, one known as the tall size, which packs 48 to the box, and the baby size packing 72 to the box, weighing 60 and 38 pounds, respectively. The small size sells for about \$2.25 a case; the larger for about \$3.25. The box in which these are shipped is a wire-bound box with a wooden frame at each end, which makes it strong, compact, and easily handled.

At the present time canned fruits, canned peas, and other like vegetables take the 20 per cent less than third class rating, and the complainant contends that evaporated milk should pay no higher rate, since its value is less than that of a number of canned fruits and no more than the canned vegetables. A case of canned peas weighs 4 pounds more than a case containing the small size milk cans and sells for 25 cents more; a case of No. 1 beans sells for \$3.60, 45 cents more than a case of milk containing the tall-size cans.

The case stands like this: At a certain time the defendants reduced the rate on this commodity in consequence of a reduction upon the same commodity in another territory and by other carriers. That reduction has now been removed, and for that reason these defendants advance this rate. It does not appear why carriers in trunk line territory originally made the reduction, nor why they have more recently made the advance.

The act of June 18, 1910, provides that in case of a rate increased after January 1, 1910, as this was, "the burden of proof to show

that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier." We do not feel that the defendants in this case have sustained that burden of proof. No material evidence was introduced by them tending to show that the present increased rate is just and reasonable. What little evidence is found in the record bearing upon that point was introduced by the complainant, and tends to show that the present rates are unreasonable, since they are more than rates applied to other commodities shipped under the same circumstances and of the same value.

Upon a consideration of all the facts and circumstances disclosed by this record, we are of the opinion and find that the rates at present exacted for the transportation of this commodity in less than carloads are unreasonable and that rates should be established for the future not higher than those in effect prior to June 1, 1911; and it will be so ordered.

22 L. C. C. Rep.

No. 3531.

COLORADO COAL TRAFFIC ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted March 28, 1911. Decided January 8, 1912.

1. In *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 17 I. C. C. Rep., 479, the Commission established through routes and joint rates from the coal mines in the Walsenburg district in Colorado to points on the Atchison, Topeka & Santa Fe system and controlled lines to the east and south of Colorado. It excluded from its order in said case 77 points in Kansas to which it found that there were already in effect satisfactory through routes. Neither did the order in said case extend to points in Texas and Oklahoma, as the record did not indicate whether those points should be reached via the Amarillo gateway or via Pueblo.
2. The present proceeding seeks the establishment of through routes to the 77 junction points above referred to on the ground that the amendment to the statute of June 18, 1910, makes it possible for the Commission now to grant the prayer of the original petition. Complainant asks further that through routes be established to the points in Oklahoma and Texas which the former decision of the Commission did not include.
3. Upon the record; *Held*, That complainant has not shown sufficient details as to existing conditions at the 77 junction points to justify the Commission in requiring defendants to establish additional through routes to said points; *Held, further*, That defendants should establish through routes and joint rates to points in Oklahoma and Texas from the Walsenburg district in line with the through routes established under the order in the *Cedar Hill Coal & Coke Co. case, supra*.

C. W. Durbin for complainant.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway Company; Leavenworth & Topeka Railway Company; and Kansas Southwestern Railway Company.

E. E. Whitted and J. M. Cates for Colorado & Southern Railway Company.

E. N. Clark, A. C. Campbell, and Fred Wild, jr., for Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a voluntary association of coal operators having mines in the southern part of the state of Colorado in what is known as the Walsenburg district, located along the lines of the Colorado & Southern Railway Company and the Denver & Rio Grande Railroad Company. Its petition seeks the establishment of through routes and joint rates from the mines in the Walsenburg district to certain points in Kansas and also to points in Oklahoma and Texas.

In *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 17 I. C. C. Rep., 479, the Commission established through routes and joint rates to many points in Kansas on the lines of the principal defendant, the Atchison, Topeka & Santa Fe Railway Company, but excluded therefrom 77 junction points to which it was found that satisfactory through routes were already in existence. In the opinion referred to the Commission further declined to establish through routes and joint rates to points in Oklahoma and a part of Texas, for the reason that upon the record as presented it was impossible to decide via what junction points the routes should be established. The present proceeding is in the nature of a reopening of that case upon the two grounds above specified in which the relief sought was denied. As stated on behalf of complainant—

we are asking in this case that a joint rate be established from the mines in the Walsenburg district to every point where rates are named from mines on the Santa Fe and the Colorado & South Eastern in the Cañon City district.

With regard to the through routes and joint rates asked to the 77 junction points, it is urged on behalf of complainant that when the former order was entered section 15 of the act to regulate commerce gave the Commission power to establish a through route and joint rate only, "provided no reasonable or satisfactory through route or joint rate exists;" that section 15 of the act as amended June 18, 1910, changed the law so that at the present time the Commission has power to establish a through route, even if there is already a route in effect; that therefore the Commission may now grant the relief as prayed. Attention is also invited by complainant to section 1, which requires that through routes and just and reasonable rates be established, there being no exception to that provision of the statute.

The evidence introduced on behalf of complainant for the purpose of fortifying its prayer for relief in respect to the particular feature now under consideration is to the effect that it is impossible for dealers at the junction points whose bins are on the Santa Fe tracks to successfully handle coals from the Walsenburg district because of the expense of the extra haul. It is stated that this in itself proves that the present through routes are not satisfactory. It is further

stated that the rate of the Santa Fe on nut coal from the mines in the Cañon City district of Colorado, which is located upon the lines of the Santa Fe, to points in southern Kansas is \$2.75 per ton, while from the mines in the Walsenburg district to the same points the rate is \$3 per ton via the Rock Island or the Missouri Pacific. It is averred that this difference in the rate operates against the sale of nut coal and shows that the present through route via the Rock Island or Missouri Pacific is not satisfactory, as no dealer would buy Walsenburg coal and pay \$3 per ton freight when he can get the Cañon City coal with a rate of \$2.75.

We are not impressed with the argument that the mere fact that a dealer's bins are located upon the track of a particular carrier is conclusive proof that an additional through route should be established in order to reach the bins. Under certain circumstances this might appear to be the proper conclusion, but it would depend upon disclosure of facts and circumstances which are not apparent upon the present record. It is entirely conceivable that there might be other solutions to any such transportation problem as is here presented which would be more reasonable and more in accordance with the provisions of the statute than the establishment of additional through routes via particular lines. For example, under certain circumstances it might be desirable to have the bins reached by the through route already in effect to the particular point, with a switching service and proper charge for such terminal delivery.

Complainant produced witnesses from a few of the large number of points involved, whose testimony was principally upon the question of location of particular coal bins at a few of the destination points. Concerning a great majority of said junction points there is no information in the record whatsoever, and with regard to the points concerning which there is evidence the record is wholly inadequate as a basis for granting the relief sought in the petition. Neither is there any testimony to show that the rate of \$3 per ton charged to certain points via the Rock Island or Missouri Pacific is unjust or unreasonable, and we do not see how the fact that the Santa Fe hauls coal from the Cañon City district to said points at a rate of \$2.75 per ton has any bearing upon the issues presented.

With respect to the prayer of complainant for the establishment of through routes and joint rates to points in Oklahoma and Texas, in the former proceeding above referred to no action was taken upon that matter, because the record as made would not justify it. It now fairly appears from the testimony of the principal defendant's witness that it will make no difference to the Santa Fe via which gateway the through routes and joint rates from the Walsenburg district to the points in question are established. The record in the former

case fully sustained the right of complainants to the through routes and joint rates to the points in Oklahoma and Texas, as well as to the Kansas points. Upon our investigation of the whole subject, it is our finding and conclusion that defendants should establish through routes via Pueblo, Colo., from the mines in the Walsenburg district to all points named in Santa Fe tariffs, I. C. C. Nos. 5250 and 5251, to which, from mines in the Walsenburg district, there are now no through routes and joint rates, and that joint rates should be established which should not exceed the rates maintained by defendant Atchison, Topeka & Santa Fe Railway Company from the mines in the Cañon City district to said points.

It will not be necessary to repeat at this time what is said in the *Cedar Hill Coal & Coke Co. case, supra*, upon the subject of the necessity for the relief herein granted in the establishing of the through routes. The question of the amount of the rates found herein to be reasonable was also fully discussed in said report and need not be repeated.

No order will be entered in the premises at the present time, but the case will be held open and defendants will be allowed 90 days in which to file tariffs naming rates and routes in accordance with the conclusions herein announced.

22 I. C. C. Rep.

No. 3616.
EMPSON PACKING COMPANY
v.
COLORADO MIDLAND RAILWAY COMPANY ET AL.

Submitted May 6, 1911. Decided January 8, 1912.

Complaint assails the reasonableness of the carload rates on canned goods from Colorado points to the Pacific coast terminals, the rate being 80 cents per 100 pounds on the general mixture of canned goods from Colorado points to north Pacific coast terminals while the rate to California terminals is 85 cents. From the facts disclosed by the record; *Held*, That the rate from Colorado points to the California terminals is unjust and unreasonable in so far as it exceeds 80 cents; *Held further*, That the rate to the north Pacific coast terminals is not shown to be unreasonable.

F. E. Gregg and E. P. Costigan for the complainant.

Clayton C. Dorsey, William V. Hodges and E. T. Thayer for the Union Pacific Railroad Company, Southern Pacific Company, Northern Pacific Railway Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company.

T. J. Norton and J. J. Coleman for the Atchison, Topeka & Santa Fe Railway Company.

E. E. Whitted and J. M. Cates for the Colorado & Southern Railway and Chicago, Burlington & Quincy Railroad Company.

E. N. Clark, A. C. Campbell, and F. Wild, jr., for the Denver & Rio Grande Railroad Company.

E. N. Clark, A. C. Campbell, F. Wild, jr., and Warren Olney for Western Pacific Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with its principal office at Longmont, Colo., and operates plants for the canning and packing of peas, beans, hominy, pork and beans, tomatoes, pumpkin, and kraut at Longmont, Loveland, and Greeley, Colo. The original petition was filed October 24, 1910, on behalf of complainant and others similarly situated. In the course of its business complainant ships its products

to the Pacific coast terminals, including those on the north Pacific coast and in California, and the petition assails the reasonableness of the rates charged by defendants for the transportation of complainant's products to those terminals. All the rates involved are carload rates, based upon a minimum weight of 40,000 pounds. Reparation is sought.

Prior to December, 1909, there was in effect a rate of 85 cents per 100 pounds from the producing points in Colorado to the California terminals on the general mixture of canned goods, exclusive of canned peas and beans, on which the rate was 80 cents. On December 6, 1909, the rate of 80 cents on peas and beans was canceled and 85 cents established as the carload rate upon all the commodities manufactured by complainant. The rate on complainant's products to north Pacific coast terminals has for some time been 80 cents, and this rate is also assailed in the present proceeding as being unreasonable and unduly prejudicial. The contention of complainant is that the rate which should be substituted in place of the rates hereinbefore mentioned is 68 cents per 100 pounds, which is approximately 75 per cent of the rate from Chicago to the coast, and 80 per cent of the rate from the Missouri River. Roughly speaking, Chicago is 1,000 miles and Missouri River 500 miles more distant from the coast terminals than are the Colorado points. The rates in cents per 100 pounds from various points are as follows:

From—	Rate on the general mixture.	Rate on peas and beans.
	Cents.	Cents.
Chicago.....	95	90
Missouri River.....	90	85
Colorado.....	85	85
Utah.....	75	75
Wisconsin.....	95	90

It will be noted from the foregoing table that as to some of the points of origin there is a differential between peas and beans, and the general mixture, while from other points no such distinction is made. It is alleged in the petition that the charging of higher rates on certain of the products than on others is unreasonable and unjustly discriminatory.

It is averred that complainant's plants are important industries in Colorado; that its chief product is canned peas, of which it is the only packer west of Omaha; that its chief competition comes from Wisconsin, with some from Indiana, Mississippi, and New York. It is stated that nearly one-third of the peas packed in the United States are packed in Wisconsin.

In support of its claim as to the percentage of the Missouri River rate that the Colorado rate should take, complainant introduced an exhibit to show that on a number of articles the rates from Colorado to the coast were somewhat lower than from Missouri River to the coast.

The defendants recited the general history of transcontinental commodity rates and the effect of water competition upon them, and called attention to the advantage of maintaining a blanket system of rates in enabling the intermediate points of production to compete in Pacific coast markets. With respect to the advance in the rate on canned peas and beans from 80 to 85 cents, defendants explain it as a "tariff line-up to put Colorado in line with producing points east thereof to the same consuming territory west." It is further claimed that the change was made with a view to bringing the rates into conformity with the fourth section of the act, but in just what respect the latter is involved does not definitely appear from the record.

The advance in the rate on peas and beans from 80 to 85 cents met with vigorous opposition on the part of complainant, and it appears that complainant then instituted negotiations to have all the rates involved placed upon a 68-cent basis. These efforts having failed, the present proceeding was instituted.

Much of complainant's testimony was devoted to a discussion of certain advantages which it formerly enjoyed, due to greater royalties that its competitors were compelled to pay for the use of certain packing machinery. It is stated that, owing to the expiration of the patents, this condition no longer exists, and its competitors are in that respect more nearly upon an equality with itself. It is further testified that it costs more to manufacture canned products in Colorado than at points farther east, due to the greater cost of factory construction and the higher cost of materials entering into the business. However, these matters at most can have but an indirect bearing upon the question of the reasonableness of the transportation charges. It is certain that the Commission has no authority under the statute to equalize such conditions.

Evidence was introduced on behalf of complainant to the effect that the rates on canned goods should be uniform for both peas and beans and the general mixture. It will be noted that the rate has been uniform on these products to the north Pacific coast terminals, and upon the record we are of opinion that there should be no difference in this respect with regard to the rates to the California terminals. We are further of opinion, and find, that any rate in excess of 80 cents per 100 pounds upon canned goods, including peas and beans and the general mixture, from Colorado points to the California terminals was and is unjust and unreasonable, and

an order requiring the establishment of a rate not in excess of that amount will be entered. We do not find that the rate to the north Pacific coast terminals is unreasonable.

The petition contains a prayer for reparation, but at the hearing that matter was reserved for future consideration. Reparation will be awarded upon the basis of the conclusions hereinbefore expressed, and the parties will be expected to submit a statement containing the necessary information as to particular shipments which have moved at the rate herein found to have been unreasonable. Upon the receipt and verification of such a statement an order of reparation will be entered.

22 I. C. C. Rep.

No. 4132.

MARION IRON & BRASS BED COMPANY

v.

TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY
ET AL.

Submitted October 11, 1911. Decided January 8, 1912.

1. Complainant seeks to have defendants embody in their tariffs a clause, in connection with their rates on mixed-carload shipments, to the effect that if the aggregate charge upon the entire shipment is less on the basis of the carload rate and weight for one or more of the articles and the actual weight at the less-than-carload rate for the other articles, than at the mixed-carload rates, such rates shall be applied in the place of the mixed-carload rate.
2. Upon the record in this case: *Held*, That defendants' tariffs which do not contain such an alternative provision as above defined have not been shown to be unjust or unreasonable. Complaint dismissed.

G. M. Stephen for complainant.

J. L. Coleman and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with principal place of business at Marion, Ind., and is engaged in manufacturing and selling metal beds and wire mattresses. Its petition, filed May 27, 1911, alleges that the rate charged for the transportation of a mixed carload of iron beds and wire mattresses from Marion to Oakland, Cal., was unjust and unreasonable. The matter involved was first presented to the Commission October 30, 1909. Reparation is asked.

On April 2, 1908, complainant shipped from Marion to Oakland a carload of iron beds and wire mattresses, weighing 36,200 pounds, upon which transportation charges were assessed in the sum of \$452.50, based upon a rate of \$1.25 per 100 pounds. The rate assessed was that applicable to a mixed-carload shipment. Complainant alleges that the charges were unreasonable to the extent that they exceeded the amount that would have accrued upon a rate of \$1.10 per 100 pounds on 34,010 pounds of iron beds and \$1.60 on 2,210 pounds of

wire mattresses. Complainant desires that it be given the benefit of an alternative use of the rates on specific mixed shipments provided in the tariffs of the defendants. In other words, if the aggregate charge upon the entire shipment on the basis of the mixed-carload rate exceeds the aggregate of the charge upon the shipment on the basis of a carload rate for one or more of the articles and the actual weight at the less-than-carload rate for the other articles, the shipper may have the benefit of the lower charge.

The defendants object to granting the relief asked for in the petition, and assert that there would be great difficulty in ascertaining the correct weight of the various articles included in the carload, and that a provision in the tariffs such as that desired by complainant would give rise to complication and confusion in arriving at the amount of the charges for the shipment.

Upon wire mattresses in less-than-carload quantities the rate was \$1.60 and upon iron beds in carloads the rate was \$1.10 per 100 pounds. Complainant billed the whole shipment as iron beds. However, it was discovered while in transit that the shipment consisted of a mixed carload of iron beds and wire mattresses, and the rate of \$1.25, which was lawfully applicable upon such a shipment, was collected. No evidence was offered to show that the rate upon the mixed shipment or the rates upon the articles when shipped separately were unreasonable, the contention of complainant being that the alternative use of the rates, as above defined, should be established. Upon the record as presented, the Commission is not convinced that the defendants should be required to establish the alternative rule, and the complaint will therefore be dismissed.

No. 3968.

DE CAMP BROTHERS & YULE IRON, COAL & COKE
COMPANY

v.

VIRGINIA & SOUTHWESTERN RAILWAY COMPANY
ET AL.

Submitted June 12, 1911. Decided January 8, 1912.

The Virginia & Southwestern Railway Company published in a tariff effective July 13, 1906, and continued in effect until November 19, 1908, what purported to be a joint through rate of \$4.85 per net ton for the transportation of coke in carloads from Appalachia, Va., to Rusk, Tex.; but, although it showed them as participating lines, it had never obtained concurrence in said rate from the lines west of Memphis, Tenn. Complainant based its bid for the sale of coke upon the rate of \$4.85 published in the V. & S. W. tariff; *Held*, That, following rule 68, Tariff Circular 18-A, complainant is entitled to reparation from the initial carrier upon basis of the rate improperly published in its tariff.

H. R. Small for complainant.

Frank W. Gwathmey and *H. H. Shelton* for Virginia & Southwestern Railway Company and Southern Railway Company.

Roy F. Britton for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a dealer in iron, coal, and coke in the city of St. Louis, Mo. During the months of August, September, October, and November, 1908, it shipped 24 carloads of coke from Appalachia, Va., to Rusk, Tex. The rate charged and collected upon these shipments was \$5.85 per net ton. By petition, filed April 1, 1911, complainant alleges that said rate was unlawful and unreasonable so far as it exceeded \$4.85, and asks reparation upon that basis. The claim was informally presented to the Commission in November, 1908.

In August, 1908, complainant made two contracts with the penitentiary at Rusk, Tex., for the delivery of a quantity of coke, basing

its bid upon a joint rate of \$4.85 per ton from Appalachia to Rusk, as shown by the tariff of the Virginia & Southwestern Railway Company then in effect. It appears that the Virginia & Southwestern Railway Company, on July 13, 1906, in its tariff I. C. C. 426 published a joint rate of \$4.85 per ton on coke in carloads from Appalachia to Rusk. This rate purported to have been established in connection with the Southern Railway Company, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas. In accordance with the practice in force at that time, concurrences of connecting lines were not shown in the tariff by the carrier which published it. No concurrences from the St. Louis Southwestern Railway and St. Louis Southwestern Railway Company of Texas (hereinafter referred to as the Southwestern Lines) had been obtained by the Virginia & Southwestern; but the rate of \$4.85, published as a joint rate, was the then existing combination upon Memphis, Tenn., made up of \$2.65 from Appalachia to Memphis and \$2.20 from Memphis to Rusk. The same rate was republished by the Virginia & Southwestern in its tariff I. C. C. No. 571, effective June 16, 1907, and in its tariff, I. C. C. No. 622, effective March 10, 1908. In the latter tariff, however, a mark opposite the \$4.85 rate referred to a note which read as follows:

Rates to points marked thus [indicating] are filed with the Interstate Commerce Commission by agent Cale of the Southwestern Tariff Committee for account of the V. & S. W. Ry. in his Texas Tariff No. 36-B, I. C. C., 456, supplements or reissues, and are shown herein for information of V. & S. W. agents.

The same rate, with reference to the same note, is carried forward in Virginia & Southwestern tariff, I. C. C. No. 640, effective May 15, 1908. This tariff showed a list of the carriers which participated therein, and opposite the names of most of such carriers the form and number of their concurrence, but no form or number of concurrence is shown opposite the names of the Southwestern Lines. A similar publication of the \$4.85 rate was made in Virginia & Southwestern tariff, I. C. C. No. 696, effective October 15, 1908. Supplement 4 to I. C. C. No. 696, effective November 19, 1908, advanced the rate from \$4.85 to \$5.85. Supplement 6 to I. C. C. No. 696, effective January 23, 1909, canceled the rate to Rusk, leaving the lowest combination of intermediate rates to apply.

Supplement 3 to St. Louis Southwestern tariff, I. C. C. No. 1736, effective October 17, 1906, named a proportional rate on coke in carloads from Memphis to Rusk, of \$2.20 per net ton. Supplement 11 to this tariff, effective July 22, 1908, advanced the rate from \$2.20 to \$3.20 per net ton.

From the facts above stated, it will be seen that prior to July 22, 1908, the combination upon Memphis was \$4.85, the same as the rate

which was improperly published in the Virginia & Southwestern tariff; but after July 22, 1908, and when these shipments moved, the combination upon Memphis was \$5.85 per ton.

On May 28, 1907, the agent of the southwestern tariff committee called the attention of the general freight agent of the Virginia & Southwestern to the fact that the \$4.85 rate was not lawfully published, and stated that the issue should be amended at once. The tariff was not amended, however, so as to make the through rate named therein equal to the combination on Memphis until November 19, 1908, and the unlawful publication was not withdrawn until January 23, 1909. The order of the Commission requiring carriers to show in joint tariffs the form and number of concurrences of connecting lines was issued July 8, 1907, about a year before these shipments moved.

Upon the facts of record we are unable to find that the rate of \$3.20 beyond Memphis was unreasonable. But complainant contends that, in view of the fact that the through rate of \$4.85 had been published by the Virginia & Southwestern, that line was bound by its own publication, and that complainant is entitled to reparation upon basis of the rate so published. In this connection it relies upon the decisions in *Black Horse Tobacco Co. v. I. C. R. R. Co.*, 17 I. C. C. Rep., 588, and *Texico Transfer Co. v. L. & N. R. R. Co.*, 20 I. C. C. Rep., 17.

The publication of the rate here in question was in direct contravention of the rules of the Commission made under the authority of section 6 of the act, to the effect that lawful concurrence must be secured from every carrier shown as participating in a tariff, and that a joint tariff must show the form and number of concurrence of each participating line. On November 15, 1907, the Commission promulgated rule 68 of its Tariff Circular 18-A, in which it announced that in cases of this kind it would hold the carrier that unlawfully included another carrier in its tariff liable to shippers and other carriers. It is further to be observed that the note which was published in connection with this rate, and which stated that the rate would be found in agent Cale's Texas tariff 36-B, was erroneous, as the rate from Memphis is not found in that tariff, but was published in St. Louis Southwestern tariff, I. C. C. No. 1736. The initial carrier is responsible and liable for the careless manner in which it published this rate originally and continued it in force after its attention had been called to its unlawful publication. Nor do we doubt that complainant was actually damaged on account of this publication. The evidence of record shows beyond question that the bid which it made for the delivery of the coke at Rusk was based on the \$4.85 rate in the Virginia & Southwestern tariff. Complainant

22 I. C. C. Rep.

relied, as it had a right to, upon the tariff of the Virginia & Southwestern as published and posted. It could not know what the agreements between the carriers as to joint rates were.

Our conclusion, therefore, is that complainant has suffered damage for which this Commission may award reparation against the initial carrier to the extent that the charges collected exceeded the charges that would have been due under the rate of \$4.85 published by that line. Accordingly an order will be entered requiring the Virginia & Southwestern to make reparation to complainant in the sum of \$497.30, with interest from December 11, 1908.

No. 3954.

M. A. KENNEDY & COMPANY

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL

Submitted June 12, 1911. Decided January 8, 1912.

The principal defendant filed and posted a tariff naming a rate of 34 cents per 100 pounds on apples from St. Louis, Mo., to Monroe, La., in which the delivering line was not named as participant. Another joint tariff in which all the carriers were named and had concurred named a rate of 40 cents; *Held*, That the lawful rate was 40 cents, and same not being shown to have been unreasonable, and complainant having suffered no damage, the complaint must be dismissed.

C. H. Holland and O. M. Rogers for complainant.

Roy F. Britton for St. Louis Southwestern Railway Company.

V. Schaftenburg and Frank W. Gwathmey for Vicksburg, Shreveport & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, an individual trading under the firm name and style of M. A. Kennedy & Company, is engaged in the fruit and vegetable business at St. Louis, Mo. His petition, filed March 22, 1911,

alleges that unreasonable charges were exacted by defendants for the transportation of three carloads of apples from St. Louis to Monroe, La. Reparation is asked.

In December, 1908, complainant delivered to the St. Louis Southwestern Railway, at St. Louis, three cars of apples, consigned without routing instructions to the Monroe Grocery Company, Monroe, La. The shipments all moved via the St. Louis Southwestern to Shreveport, La., thence via the Vicksburg, Shreveport & Pacific to destination. Charges aggregating \$320 were assessed at a joint rate of 40 cents per 100 pounds upon the total weight of 80,000 pounds.

At the time the shipments moved the defendant St. Louis Southwestern Railway Company had on file with the Commission a tariff which named a rate of 34 cents on apples from St. Louis to Monroe, but it did not show the Vicksburg, Shreveport & Pacific as a participating or concurring carrier. This schedule, effective December 19, 1906, remained in effect until February 10, 1909. It named rates to numerous points on the lines of connecting carriers, among them the Vicksburg, Shreveport & Pacific, from which latter carrier, however, the St. Louis Southwestern had not obtained concurrence. Contemporaneously each of the defendant carriers was a party to a tariff of the Southwestern Lines Committee, in which, on November 28, 1908, a joint rate of 40 cents had been established, and this rate was applied to these shipments.

The 40-cent rate, as we have seen, was the legally established rate. The Vicksburg, Shreveport & Pacific was not shown as party to the St. Louis Southwestern tariff, and there is nothing in the record to show that complainant was damaged thereby. In these respects this case differs from *De Camp Brothers & Yule Iron, Coal & Coke Co. v. V. & S. W. Ry. Co.*, 22 I. C. C. Rep., 274. It follows that the complaint must be dismissed.

No. 1793.
MARICOPA COUNTY COMMERCIAL CLUB
v.
MARICOPA & PHOENIX RAILROAD COMPANY ET AL.

Submitted September 21, 1911. Decided January 15, 1912.

Defendants' class rates from El Paso to Phoenix found to have been unreasonable and a new schedule of maximum joint rates prescribed for the future.

E. P. Costigan, F. A. Jones, and E. J. Kuster for complainant.
F. C. Dillard, P. F. Dunne, C. W. Durbrow and H. A. Scandrett for Southern Pacific Company and Maricopa & Phoenix Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant in this case attacks the class rates and a number of commodity rates including the flour, grain, and hay rates from Phoenix, Ariz., to named points within the territory; also the class rates from El Paso, Tex., to Phoenix, as unreasonable.

Before any order by the Commission could become effective as to the intraterritorial rates in issue, Arizona will doubtless enter upon statehood. We deem it proper to leave the correction of these rates, in so far as they have not already been corrected by the carriers, to the people of Arizona. Accordingly, there remain to be disposed of only the class rates from El Paso to Phoenix.

The class rates complained of from El Paso to Phoenix, a distance of 433 miles, were combination rates made up as follows:

From—	Dis- tance.	Class.									
		1	2	3	4	5	A	B	C	D	E
El Paso to Maricopa..	Miles. 398	Cents. 190	Cents. 163	Cents. 146	Cents. 134	Cents. 108	Cents. 117	Cents. 100	Cents. 85	Cents. 75	Cents. 60
Maricopa to Phoenix.	35	26	26	26	26	24	24	24	24	24	24
El Paso to Phoenix...	433	216	189	172	160	132	141	124	109	99	84

These rates were so obviously excessive that since the filing of the complaint the defendants voluntarily introduced the through rates now effective from El Paso to Phoenix, which are as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	192	164	153	133	112	112	82	70	64	60

The class rates, complainant urged, were of peculiar importance to Phoenix, for two reasons: (1) Because there were very few commodity rates applying from El Paso to Phoenix; (2) because the rates from Missouri River points via the Southern Pacific were in most cases combination rates based on El Paso. It is no longer true that rates from Missouri River points are based on El Paso, for by the orders of the Commission in *Maricopa Co. Com. Club v. S. F. P. & P. Ry. Co.*, 19 I. C. C. Rep., 257, through class rates were established from the Missouri River to Phoenix, and it was ordered that the commodity rates from the Missouri River to Maricopa and other intermediate points should not exceed the rates to coast terminals. But it is still true that there are comparatively few commodity rates applying from El Paso to Phoenix, so that the great bulk of the shipments thence move under these class rates.

After full hearing and investigation we find the class rates at present effective, as well as those complained of, to be unreasonable, and we are of opinion and find that the following are just and reasonable joint rates for the future:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate	165	137	122	99	83	83	66	55	50	42

The rates herein prescribed will be governed by the western classification.

An order will be entered accordingly.

No. 4008.

CONTINENTAL IRON & STEEL COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted August 30, 1911. Decided January 8, 1912.

The provision in southern classification which limits the rating upon scrap iron does not require that bridge material be broken into pieces before it is entitled to the scrap-iron rate. Overcharge which resulted from erroneous interpretation of the rule should be refunded by defendants.

Harry W. Newburger for complainant.

Claudian B. Northrop and *A. M. Bull* for Southern Railway Company.

William A. Northcutt for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the purchase and sale of old iron and steel at New York, N. Y. By petition, filed April 6, 1911, it alleges that an unreasonable and unlawful rate was charged by defendants for the transportation of five carloads of scrap iron, New Orleans, La., to Richmond, Va. Reparation is asked.

The material transported, which consisted of parts of an old bridge that had been taken apart, was forwarded by complainant from New Orleans to the Tredegar Company, Richmond, Va. The shipment, consisting of five carloads, moved December 21, 1909, over the lines of defendants, and transportation charges were paid in the sum of \$1,100.85, at a rate of 41 cents per 100 pounds applied to the weight of 268,500 pounds. This was the rate applicable to bridge material at the time of shipment. Complainant contends that the rate on scrap iron of \$4.50 per ton should have been applied. The uncontradicted evidence is that the material was purchased for use as scrap iron; that upon arrival at destination it was broken into small pieces and remelted; and that it had no value for any purpose save remelting. Defendants assert that the traffic was not entitled to the scrap-iron rate because it was not broken into scraps or pieces before

shipment, and call attention to the following rule of the southern classification which governs the application of ratings on scrap iron:

The ratings specified hereon on scrap iron will apply only on scraps or pieces of old or secondhand iron or steel which can not be again used for the purposes for which they were used when new, and said ratings will not apply on old or secondhand machinery, engines, boilers, or similar articles, unless same are broken into scraps or pieces at the point of shipment before being tendered to the carrier.

Defendants contend that under this rule, in order to take the scrap-iron rate, this material should have been broken into pieces before shipment. As we read the rule, however, the limitation in question applies only to secondhand machinery, engines, boilers, or *similar* articles. The shipment complained of did not consist of secondhand machinery, engines, or boilers, and we do not believe that under any fair construction of the language of the rule this old bridge material can be considered similar to secondhand machinery, engines, or boilers. From a practical standpoint and as a matter of physical possibility it should be noted that few, if any, bridges could be "broken into scraps or pieces" at the point where they are dismantled, and the interpretation of the rule contended for by the carriers would have the inevitable effect of denying to scrap bridge material a lower rate than is accorded to the same material when new or before its period of service as a bridge has ended. The shipment was billed as scrap iron, and it is undisputed that it was used as scrap iron. Our conclusion is, therefore, that under the rule in question it was entitled to the scrap-iron rate of \$4.50 per net ton, and that complainant was overcharged in the sum of \$496.72, which amount should be refunded by defendants without the requirement of an order by the Commission. Upon receipt of evidence that refund of said amount has been made, the complaint will be dismissed.

22 I. C. C. Rep.

No. 8545.

ACME CEMENT PLASTER COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted January 26, 1911. Decided January 8, 1912.

Rates of 19 and 22½ cents per 100 pounds on fuel oil from Sapulpa, Okla., to Acme, Tex., in effect prior to July 26, 1909, found to have been unreasonable so far as they exceeded a rate of 15 cents. Reparation awarded.

W. E. Fisse, S. H. Cowan, and M. N. Sale for complainant.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

Charles H. Sommers for Quanah, Acme & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with headquarters at St. Louis, Mo. By petition, filed September 20, 1910, it attacks as unreasonable defendants' carload rates on fuel oil from Sapulpa, Okla., to Acme, Tex., in effect prior to July 26, 1909, and asks reparation.

Between May 17 and July 5, 1909, complainant shipped from Sapulpa to Acme 37 carloads of fuel oil over the lines of the St. Louis & San Francisco Railroad; St. Louis, San Francisco & Texas Railway; and Quanah, Acme & Pacific Railway, upon which various rates ranging from 19 cents to 25 cents were applied, resulting in the assessment of freight charges aggregating \$6,249.36.

Prior to July 1, 1909, there was from all Oklahoma points to Acme a rate of 22½ cents on crude and fuel petroleum oil for steam and fuel purposes. On July 1, 1909, a rate of 19 cents on crude or fuel oil was established from all points in Oklahoma to Acme, but the 22½-cent rate was still maintained on "crude and fuel petroleum oil for steam and fuel purposes only." Effective July 26, 1909, the defendants established a rate of 15 cents from Sapulpa to Acme, which is without restriction as to the use of the oil. Reparation is asked upon the basis of this rate which is still in effect and to which all the defendants are parties.

For some time prior to the movement of the shipments in question, complainant's Acme mills drew their entire supply of oil from Texas

fields under transportation rates fixed by the state of Texas; but for the reason that the price of the Texas commodity was relatively high, and also because the Oklahoma oil was preferable for fuel purposes, the complainant was anxious to substitute the latter for fuel at its Acme mills. It therefore took up with the defendants the question of the establishment of lower rates from the Oklahoma fields to Acme. It was pointed out to the defendants that if the proper rate were applied they would secure the transportation of complainant's entire fuel oil supply. Concurrently the complainant began negotiations with producers at Sapulpa. As result thereof defendants agreed to establish a 15-cent rate, which is practically equivalent to the combination of the Oklahoma and Texas distance rates in force within those respective states. On May 8, 1909, the complainant made a contract with Oklahoma producers for its entire supply of fuel oil.

The rates from Oklahoma points to Texas points are carried in one of agent Leland's tariffs and there was some delay on the part of the agent in establishing the agreed rate. Complainant's witness says that he finally arranged to have agent Leland make application to the Commission for permission to establish the rate on less than statutory notice. We find in a supplement filed with the Commission July 22, 1909, that the rate was published to become effective on July 26, reference being made to special permission granted by the Commission. Upon reference to the application of agent Leland we find that it was predicated upon a statement of facts alleging that—

owing to an unusually large flow of oil the capacities of the storage tanks located at the various producing points have been overtaxed, and in order to prevent irreparable loss to the shippers, the carriers, upon the solicitation of the shippers, have agreed to establish the rates hereinbefore requested in order to find a ready and nearby market for this commodity.

Upon the representation of this emergency the Commission on June 25, 1909, issued permission to establish the rate on 8 days' notice. The record contains a letter from the freight traffic manager of the St. Louis & San Francisco Railroad Company, under date of August 16, 1910, in reference to the application of that carrier for permission to make reparation of the amount involved in this claim on the special docket, in which he says:

The 15-cent rate was established to meet coal competition, and because, under the existing conditions, it was considered a fair charge for the service involved. It was not established to bring the point in question into line with other points.

The entire record indicates that the establishment of the 15-cent rate resulted from a careful consideration of competitive conditions and was sufficiently low to accomplish the end sought, which was the movement of fuel oil from the Oklahoma fields to Acme in competi-

tion with oil from the Texas fields. The letter of the freight-traffic manager is entirely consonant with the testimony. Nowhere, or at any time, has the slightest allusion since been made to the conditions of emergency in the Oklahoma fields, recited and subscribed under oath by agent Leland, in the application for permission to publish the rate on less than statutory notice in order that "an unusually large flow of oil" might be promptly hauled away from the Oklahoma fields and "irreparable loss to the shippers prevented."

The act to regulate commerce authorizes the Commission in its discretion and *for good cause shown*, to permit changes in tariff rates or fares on less than statutory notice. The Commission seeks to limit the exercise of this discretionary power to cases where actual emergency and real merit are shown. The power is not to be lightly regarded under the statute, and it will not be exercised to aid a carrier in any strategic endeavor, nor to aid shippers in any ordinary commercial exigency of the nature disclosed in the record of this case.

The distance from Sapulpa to Acme is 292 miles. The 15-cent rate also applies from Sapulpa to Bonham and Denison, Tex., distances of 226 and 197 miles, respectively; and from Morris, Okla., to Beaumont, Tex., 510 miles; and Sabine, Tex., 566 miles. Defendants concede that 15 cents was and is a reasonable rate.

Upon all the facts of record we find that the rates charged on these shipments were unreasonable to the extent they exceeded 15 cents. Reparation on that basis will be awarded in the sum of \$2,221.30, with interest from July 12, 1909. This sum includes overcharges on certain of the shipments which were charged at a rate of 25 cents. In view of the fact that the rates attacked were reduced prior to the filing of the complaint and that the present rate of 15 cents has been maintained for more than two years, no requirement as to a rate for the future will be made. An order will be entered accordingly.

22 I. C. C. Rep.

No. 3554.

EL DORADO OIL MILLS & FERTILIZER COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY.

Submitted March 13, 1911. Decided December 5, 1911.

Rate of 7½ cents per 100 pounds charged by defendant for transportation of 20 carloads of acid phosphate and kainit from Ruston, La., to El Dorado, Ark., found to have been unreasonable and unjustly discriminatory. Rate of 5 cents per 100 pounds prescribed for the future. Reparation awarded.

G. F. Thomas for complainant.

Thomas S. Buzbee for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation engaged in the manufacture of commercial fertilizers at El Dorado, Ark., filed its petition September 28, 1910, alleging that it was charged an unreasonable rate for the transportation of certain carloads of fertilizer materials from Ruston, La., to El Dorado, Ark. The petition prays for the establishment of a reasonable rate on the traffic involved between said points and seeks reparation on past shipments.

On various dates in January, February, March, April, and May, 1910, complainant shipped over defendant's line from Ruston, La., to El Dorado, Ark., 20 carloads of fertilizer materials, consisting of acid phosphate and kainit, of the aggregate weight of 1,454,200 pounds, for which transportation charges were collected at a rate of 7½ cents per 100 pounds, amounting to \$1,090.65. Complainant contends that the charges were unreasonable to the extent that they exceeded a rate of 2½ cents per 100 pounds, or 50 cents per ton, and reparation is asked on that basis.

During the period covered by the shipments there was in force a rate applicable to acid phosphate and kainit in carloads via defendant's line from Ruston to El Dorado of 7½ cents per 100 pounds. The distance is 56 miles. There was at the same time a rate on the same commodities in carloads from New Orleans, La., to Ruston, a distance

of 275 miles, of 10 cents per 100 pounds, or \$2 per ton. There was also a through rate from New Orleans to El Dorado, a distance of 331 miles, of \$3.50 per ton, or 17½ cents per 100 pounds. Defendant was a party to the Ruston rate as well as the rate to El Dorado.

Effective March 1, 1911, a through rate of 12½ cents per 100 pounds, or \$2.50 per ton of 2,000 pounds, on acid phosphate and kainit in carloads from New Orleans to El Dorado, was established by defendant, and that rate is still in force. There has been no change, however, in the rate from Ruston to El Dorado. Commercial fertilizers are manufactured and sold at Ruston as well as at El Dorado.

Prior to March 1, 1911, when the through rate from New Orleans to Ruston was reduced, the combination on Ruston and the through rate were the same, namely, \$3.50 per ton. Complainant now contends that the combination rate and the through rate shall be equal, as they were before the through rate was reduced. We see no merit in this contention.

Upon the facts of record in this proceeding, and in view of the general situation with regard to the rates on fertilizer materials that are maintained in this particular territory, and to which we have hereinbefore referred, we are of the opinion and find that the transportation charge made to complainant was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 5 cents per 100 pounds, and a rate not in excess of that amount will be prescribed for the future. The conclusion that we have just announced has been reached without reference to what may have been said in other cases involving rates elsewhere, in which we have been called upon to fix reasonable rates upon fertilizer materials. We further find that complainant made the shipments in accordance with the above statement of facts and paid charges thereon at the rate found herein to have been unreasonable and unjustly discriminatory, and that complainant has been damaged thereby and is, therefore, entitled to an award of reparation in the sum of \$363.55, with interest from July 1, 1910, on the basis of our conclusion. An order will be entered in accordance with the finding herein announced.

No. 2109.

WELLS-HIGMAN COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted March 14, 1911. Decided January 8, 1912.

Rate of 94 cents per 100 pounds for the transportation of fruit baskets in carloads from Wynne, Ark., to Horatio, Ark., via Texarkana, Tex., found to have been unreasonable so far as it exceeded 50 cents per 100 pounds. Reparation awarded.

O. M. Rogers for complainant.

James C. Jeffery, H. J. Campbell, and C. C. P. Rausch for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION UPON REHEARING.

BY THE COMMISSION:

The Commission's report upon the original record in this case is to be found at 18 I. C. C. Rep., 175. In that report it was held that the evidence presented was insufficient to determine what would have been a reasonable rate for the transportation service in controversy. Complainant petitioned for a rehearing in order to present evidence on that point. The petition was granted, and the case now stands for disposition upon the evidence presented at the rehearing.

The material facts are set forth in the former report, but they may be briefly restated. During the summer of 1908 the complainant, a corporation which manufactures fruit baskets at Traverse City, Mich., sold to the Southern Orchard Planting Company, at Horatio, Ark., at a delivered price, eight carloads of fruit baskets. For the purpose of obtaining on the final portion of the haul the rates put into effect by the Arkansas state railroad commission, the shipment was made from Traverse City to Memphis, Tenn., thence to Wynne, Ark., and thence to Horatio, Ark. The transportation charges for each of these shipments were paid separately by complainant or its agent, and new bills of lading were taken out at Memphis and Wynne.

The entire movement consisted of eight carloads from Traverse City to Horatio, but certain parts of that movement are not involved in this case. The rate to Memphis is not in issue. Four carloads moved from Wynne to Horatio by an intrastate route, and the rates charged therefor are not subject to the jurisdiction of the Commission. The complaint, therefore, relates to the movement from Memphis to Wynne of eight carloads of baskets, of a total weight of 122,500 pounds, for which a rate of 20 cents per 100 pounds was charged; and to the movement from Wynne to Horatio, via Texarkana, Tex., of four carloads of baskets, of a total weight of 61,880 pounds, for which a rate of 94 cents per 100 pounds was charged. For the movement of the four cars from Wynne to Horatio defendants originally assessed a rate of 83 cents on a weight of 79,560 pounds, but in the former report this charge was found to have been erroneous and correction was subsequently made to the basis above stated.

There was at the time of shipment no joint rate on the traffic from Traverse City to Horatio. Had the shipment been billed through from point of origin to destination without routing instructions by the shipper, it would have been the duty of the carriers to forward it under the lowest combination of intermediate rates. There was a rate of 28 cents, Traverse City to Memphis; a rate of 53 cents, Memphis to Texarkana; and a rate of 22 cents, Texarkana to Horatio; the sum of such intermediate rates amounting to \$1.03. However, it was stated in the tariff that the rate of 22 cents, Texarkana to Horatio, was not applicable to traffic from connecting lines, and no other rate has been found which could lawfully have been applied to that portion of the haul. In assessing the rate of 94 cents actually applied to the shipment, the defendants used a rate of 72 cents, Wynne to Texarkana, and the 22-cent rate, Texarkana to Horatio; but, as noted, the 22-cent rate was not, under the restrictive terms of the tariff, applicable. Under the western classification these baskets are rated fourth class, and the rates assessed for the movement from Memphis to Wynne and from Wynne to Horatio were the fourth class rates between those points. Complainant calls attention to the fact that defendants maintain a commodity rate on this traffic, Memphis to Clarksville, Ark., of 30 cents, for a haul of 250 miles, and that in western trunk line territory, about a year after this shipment moved, these baskets were given double the lumber rate with a minimum of 15,000 pounds.

The distance from Traverse City to Memphis is 856 miles; from Memphis to Wynne 46 miles; from Memphis to Clarksville 250 miles; and from Wynne to Horatio, via Texarkana, 294 miles. The 20-cent rate, Memphis to Wynne, produces revenue of 8.7 cents per ton per mile; the 94-cent rate, Wynne to Horatio, produces revenue

of 6.3 cents per ton per mile; and the commodity rate of 30 cents from Memphis to Clarksville gives revenue of 2.4 cents per ton per mile.

The record does not show why a commodity rate was established to Clarksville, nor does it indicate that similar rates should be established to other points in Arkansas. While it is true that a number of carriers in western trunk line territory have now established rates on these baskets which are equal to double the lumber rate, with a minimum carload weight of 15,000 pounds, no such commodity rates have been established in southwestern territory. Effective May 27, 1909, defendants established a lumber rate of 9 cents, Memphis to Wynne. Double this rate would be 18 cents, or 2 cents less than complainant was compelled to pay for the transportation of these baskets between the points named. Upon the record, however, we are unable to find that the rate of 20 cents for the transportation from Memphis to Wynne was unreasonable.

The rate of 94 cents, charged for the transportation from Wynne to Horatio, producing revenue of 6.3 cents per ton per mile, appears to have been clearly excessive. Effective August 29, 1908, defendants established a lumber rate of 22½ cents from Wynne to Horatio. Double this rate would be 45 cents. We do not conclude upon the present record that defendants should establish commodity rates on these baskets equal to double the lumber rates, but we are of opinion that any rate for the transportation from Wynne to Horatio, via Texarkana, in excess of 50 cents per 100 pounds, was unreasonable. The weight of the four carloads carried from Wynne to Horatio, via Texarkana, was 61,880 pounds, and charges were collected in the sum of \$581.67 at a rate of 94 cents per 100 pounds. Based upon a rate of 50 cents per 100 pounds, which we find would have been reasonable, complainant is entitled to reparation in the sum of \$272.27, with interest from July 17, 1908.

As noted above, complainant separated what would ordinarily have been a through shipment into three separate shipments in the belief that it would thereby obtain a lower through charge. Complainant's baskets are so constructed that they can be closely nested in a car, but certain other kinds of fruit baskets are not so constructed, and the record does not indicate what would be a proper minimum carload weight for the several kinds of baskets. Therefore, our order will be limited to requiring defendants to establish a rate of 50 cents per 100 pounds for the transportation of baskets, nested in bundles, in carloads, from Wynne, Ark., to Horatio, Ark., via Texarkana, Tex.

No. 4087.

DAVIS SEWING MACHINE COMPANY

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY.

Submitted June 28, 1911. Decided January 8, 1912.

In the official classification, prior to July 1, 1910, bicycles in carloads were rated second class; on that date the rating was raised to first class; *Held*, That defendant has failed to justify the advanced rating and that the former rating should be restored. Reparation awarded.

Collett & Hutchinson for complainant.

James Stillwell for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture of bicycles at Dayton, Ohio. By petition, filed May 8, 1911, it complains of an increase in the rate charged for the transportation of bicycles in carloads from Dayton to Chicago, Ill., resulting from a change in the rating of bicycles from second to first class in official classification. The higher rate is alleged to be unreasonable, and reparation is asked on 52 carloads of bicycles which moved between July 6 and December 23, 1910.

The second class rating on bicycles in carloads had been in force since 1904; prior to that time there had been no carload rate; on July 1, 1910, the rating was advanced to first class. This was part of a general advance in the rating of articles light in weight in comparison with bulk; canoes, power launches, lifeboats, surfboats, and rowboats were all changed from second to first class. No explanation was offered as to why it was considered necessary to advance on these articles the rate that had remained in force for six years, except that car earnings thereon were small as compared with heavier articles, such as iron and steel.

Ten or fifteen years ago the bicycle might properly have been ranked as a luxury; since that time its use for pleasure has decreased, while the cheapening of its price has led to its wider use by artisans in going to and from their work and by others in connection with occupations involving considerable movement from place to place within limited areas. It may be regarded to-day as an industrial con-

venience, if not a necessity, rather than as a luxury. The proper comparison for the purposes of testing the reasonableness of the rate is with other vehicles. Coupés, pony carts, speeding or training carts, and sulkies in carloads are all rated 15 per cent less than second class. Buggy tops, crated, which correspond with crated bicycles in bulk, weight, value, and convenience of handling, take 15 per cent less than second class. In the entire classification of vehicles not self-propelling, bicycles and tricycles are the only articles taking first class rates. The minimum carload weight on all the vehicles enumerated for comparison is 11,000 pounds; on bicycles it is 10,000 pounds.

A comparison of carload revenue on the basis of the minimum weight, Dayton to Chicago, is as follows: Bicycles, \$38.50; coupés and other vehicles, \$30.80. Sewing machines, set up, are third class with a minimum of 15,000 pounds, giving a carload revenue of \$36.75. At the second class rate the carload revenue on bicycles is \$33.

Complainant's evidence is to the effect that a 36-foot car will contain 225 to 235 crated bicycles, the value of the carload being \$1,800 to \$2,000. Nothing short of a wreck is likely to damage the machines thus shipped, and in 15 years complainant has presented no claim for damages to bicycles. During the past five years complainant has shipped from Dayton to Chicago about 500 carloads of bicycles, the average for the first three years being about 70 and for the last two years 140. These comparisons indicate no reason why bicycles should now be rated higher than second class.

The reasonableness of the present rate on bicycles as compared with other articles has been considered; but the burden of proof to justify the increase of any rate since January 1, 1910, was placed upon the carriers by the amendment of June 18, 1910, to the act to regulate commerce. The rate complained of was advanced July 1, 1910, and defendant has wholly failed to present any evidence which justifies that advance. Therefore we find that the advance of bicycles from second to first class was unreasonable, and that for the future defendant should be required to cease and desist from charging in excess of its second class rate for the transportation of bicycles in carloads from Dayton to Chicago.

Complainant paid for the transportation of the 52 carloads of bicycles, mentioned in the petition, from Dayton to Chicago over defendant's line the sum of \$2,006.62, at the first class rate of 88½ cents per 100 pounds. We are of opinion, and so find, that said charges were unjust and unreasonable so far as they exceeded \$1,719.96, which would have accrued at the second class rate of 88 cents. Reparation will be awarded to complainant in the sum of \$286.66, with interest from December 31, 1910. An order will be entered accordingly.

No. 3649.

SOUTH ATLANTIC WASTE COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 18, 1911. Decided January 15, 1912.

Rate of 46 cents per 100 pounds for the transportation of cotton waste from Charlotte, N. C., to New York, N. Y., held unreasonable and discriminatory as compared with rate on cotton goods from and to the same points. Lower rate prescribed for the future.

Tillett & Guthrie for complainant.

M. P. Callaway for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation engaged in the manufacture of cotton waste, with its plant at Charlotte, N. C., filed a petition November 5, 1910, alleging that defendants' rates for the transportation of cotton waste from Charlotte to New York, N. Y., were and are unreasonable and discriminatory as compared with rates on cotton piece goods from Charlotte, and relatively with rates on cotton waste from Augusta, Ga. Reparation is asked.

The distance from Charlotte to Norfolk via the Southern Railway is 351 miles, and via the Seaboard Air Line it is somewhat less. Upon a generally accepted basis in the division of rates between rail and water carriers, one land mile is constructively reckoned as equivalent to two nautical miles north of Cape Hatteras, while to the south of the Cape one land mile is equal to three nautical miles. This basis gives from Charlotte to New York a rail-and-water mileage of about 511 miles over the Southern Railway and Old Dominion line, which complainant regards as the most practicable route.

For several years prior to the filing of this complaint the rate on cotton waste and on cotton goods, in carloads and in less-than-carload quantities, from Charlotte to New York had been 46 cents via either the Southern or the Seaboard. In the spring of 1910 the complainant opened negotiations with defendants for lower rates on cotton waste, particularly to New York and other northern cities to which rates were made on a relative basis. The defendants agreed to

establish a rate of 41 cents on cotton waste in carloads, and the Seaboard published that rate effective June 25, 1910. It is said that the Commission's tariff rules would not admit of the Southern's then existing tariff being further supplemented and that therefore the agent was directed to publish the rate in a new tariff that he was compiling, and which became effective September 25, 1910. It was intended that this tariff should also take up and continue the Seaboard's rate. Due to error in compilation, however, the consolidated tariff published a 46-cent rate and it was not until February 12, 1911, that the reduced rate of 41 cents on cotton waste in carloads was finally established via both lines.

The complainant is not satisfied with the reduction which has become effective since the filing of the petition, in which it asked for a 35-cent rate so that Charlotte may be placed on an equality with Augusta. In its brief, filed since the hearing, it argues for the establishment of a 31-cent rate. Defendants deny that their rate is unreasonable or unduly discriminatory and assert that it is on a fair relative basis with rates from other important mill points in the south, and cites Greenville and Spartanburg, S. C., from which the rate to New York is 49 cents, and Atlanta and Macon, Ga., from which rates to New York are 55 and 54 cents, respectively.

Cotton waste is manufactured from cotton-factory sweepings or refuse, and its average value is about \$5.75 per 100 pounds. It is shipped in compressed bales, usually of the dimensions of 50 by 40 by 30 inches, of the average weight of about 600 pounds per bale, or 18 pounds per cubic foot. Its value is about \$30 per bale, or about 90 cents per cubic foot. Cotton goods are also shipped in bales, compressed to the average dimensions of 32 by 40 by 20 inches. The average weight per bale is 450 pounds, or about 30 pounds per cubic foot. The value varies from \$122 to \$198 per bale, or from \$8 to \$13 per cubic foot. These goods are more easily damaged than cotton waste and require greater care in handling. Cars for loading are required to be clean, free from nails or other projections, with even floors, and without danger of leakage. Expense and risk are greater in the transportation of cotton goods than cotton waste.

The output of complainant's mill is from eighteen to twenty million pounds per year, of which from four to five million pounds is cotton waste. This product is either shipped to the markets generally throughout the United States or is exported. The annual shipments to New York aggregate one and one-half to two million pounds, or about one-third of the output.

In official classification territory cotton waste compressed in bales is rated fourth class in less-than-carload quantities and fifth class in carloads, while cotton goods are 15 per cent less than second class. In western classification territory waste is third class in less-than-

carload quantities and fourth class in carloads, while cotton goods are first class. In southern classification territory cotton waste is fifth class and cotton goods fourth class in any quantity. From Charlotte to New York the fourth class rate, rail-and-water, is 53 cents and the fifth class 46 cents. From Augusta to New York the fourth class rate, rail-and-water, is 58 cents, and the fifth class 47 cents.

In Riverside Mills v. S. Ry. Co., 12 I. C. C. Rep., 388, the Commission had before it the question whether a rate of 41 cents on cotton waste from Augusta to New York, which was the same as the rate on cotton goods between the same points, was reasonable. In its report the Commission said:

The value of cotton goods is about \$20 per 100 pounds, but cotton waste averages only one-fourth as much, or \$5 per 100.

Cotton goods, being easily damaged, are handled by hand or trucks, without hooks, necessitating much extra labor. It also requires clean and dry floors, free from nails, bolts, and other projections. Cotton waste does not require such care and labor, nor does its transportation involve the same degree of risk and expense.

* * * * *

Cotton waste, baled, has a lower classification than cotton goods everywhere in the United States. In official classification territory waste is fourth class and cotton goods 15 per cent less than second class. In western classification territory waste is third class, less than carloads; fourth class, carloads; and cotton goods, first class. In southern classification territory cotton goods are fourth class and waste fifth class. Waste has a lower rate than cotton goods in official classification territory.

In that case the Commission expressed the opinion—

that upon two classes of freight so unequal in value and in the cost of handling—differences fully recognized in the classifications and rates obtaining generally throughout the country—the exaction of the same rate on both commodities is unreasonable, and discriminatory, and that no higher rate from Augusta, Ga., to New York, N. Y., sea and rail, than 35 cents per 100 pounds is justified upon baled cotton waste.

Complainant contends that the 46-cent rate from Charlotte is unreasonable and discriminatory as compared with the rail-and-water rate of 35 cents from Augusta. The rail-and-water distance from Augusta to New York, via the Southern, is 713 miles. The rails of the Seaboard Air Line do not reach Augusta, but freight from that point to Norfolk is handled through its connection with the Charleston & Western Carolina Railroad at Greenwood, S. C. The all-rail distance is something less than that via the Southern.

The gist of the contention as to the relation of rates from the two points is that in view of the shorter distance from Charlotte to New York the rate should be proportionately lower, or at all events, no higher than from Augusta. In other words, that Charlotte should at least be placed upon the same footing as Augusta. There would

undoubtedly be force in this contention but for the fact that the transportation conditions at Augusta are wholly different from those at Charlotte. At Augusta there is water competition, and rates from that point are influenced by the proximity of Augusta to the South Atlantic ports of Savannah and Charleston. There is an all-water route from Augusta to New York, via the Savannah River and the sea, of about 360 miles, according to the basis of calculation between rail and water carriers, that two nautical miles north of Cape Hatteras and three nautical miles south are equivalent to one land mile in the division of joint rates.

In *Warren Mfg. Co. v. S. Ry. Co.*, 12 I. C. C. Rep., 381, the Commission, in discussing the subject of competition at Augusta, said:

The navigation of the Savannah River from early in the last century has been a great factor affecting transportation rates at Augusta. * * * On many bulky articles, such as soda, sugar, etc., the river boats practically control the traffic. Even on cotton goods in the four or five years next preceding the filing of this complaint, the river carried a tonnage nearly equal to that handled by all the rail lines.

In another part of this report the Commission said:

The rates from Augusta to New York, by reason of the water competition, are lower than from any other point in the south and lower than from many points less distant from New York that do not have the benefit of such water competition.

The evidence shows that there are at this time a greater number of boats in the service, and that the competition at Augusta is even more active than in 1907, when the *Warren case*, *supra*, was decided.

There is no water competition at Charlotte, and it would be unjust to the rail carriers, in view of the circumstances and conditions stated, to accept rates from Augusta as the measure of reasonableness in fixing rates from Charlotte. Lower rates which are forced by water competition can not be accepted as a measure of reasonableness of rates from points where such competition does not exist. The contention of complainant as to this feature of the complaint can not be sustained.

While the issue involved in the *Riverside Mills case*, *supra*, related directly to rates from Augusta to New York, the Commission's decision was broadly to the effect that because of the great differences in value, facility of handling, and cost of transportation of cotton goods and cotton waste, which differences were found to have been recognized in classifications and rates obtaining generally throughout the country, it was unreasonable and discriminatory to exact a higher rate on cotton waste than on cotton goods. The decision was based upon a principle which, under the same circumstances and conditions, would apply to another point as well as to Augusta. Defendants were parties to that case and had official notice of the decision. In

view thereof the proper course for them would have been to readjust their rates from Charlotte to accord with the principle thus announced. We find no difference in the conditions at Charlotte and Augusta, as respects this feature, that would justify the maintenance at Charlotte of a different relation between rates on cotton goods and cotton waste from that in effect at Augusta.

Upon the whole record we are of opinion and find that the rate of 46 cents was unreasonable and unduly discriminatory to the extent that it exceeded 40 cents per 100 pounds, and an order will be entered accordingly. Reparation will be awarded on the basis of our conclusions.

During the period from October 20, 1908, to October 11, 1910, complainant made numerous carload and less-than-carload shipments of cotton waste from Charlotte to New York. About two million pounds were forwarded via the Southern to Norfolk. While about 236,730 pounds were shipped over the Seaboard to Norfolk, all went forward from Norfolk via the Old Dominion Steamship Company, and transportation charges were collected on the basis of the joint through rate of 46 cents. Reparation is claimed as to all such shipments. The amount of reparation can not be satisfactorily determined upon the present record. There is dispute as to a large number of the shipments, whether the complainant is the real party in interest. The parties will be given an opportunity to agree upon the matter between themselves and to furnish the Commission with a statement of the amount agreed upon. Upon receipt and verification of such a statement an award of reparation will be made. Failing in this a further investigation will be had.

22 I. C. C. Rep.

No. 3589.

H. S. GILE & COMPANY ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted January 16, 1912. Decided January 17, 1912.

1. Application that the Sacramento gateway be reopened on traffic moving from the eastern states to the cities of Oregon, denied.
2. Question of reparation upon transcontinental shipments to Willamette Valley points reserved for subsequent consideration in another case pending.

Edward M. Cousin for complainants.

W. F. Herrin, C. W. Durbrow, N. H. Loomis, W. W. Cotton, P. L. Williams, F. C. Dillard, and H. A. Scandrett for Southern Pacific Company; Union Pacific Railroad Company; Oregon-Washington Railroad & Navigation Company; and Oregon Short Line Railroad Company.

Carey & Kerr and C. A. Hart for Northern Pacific Railway Company; Great Northern Railway Company; Oregon Electric Railway Company; and Spokane, Portland & Seattle Railway Company.

Henry Thurtell for Interstate Commerce Commission.

REPORT OF THE COMMISSION.

LANE, Commissioner:

This is an application that the Sacramento gateway be reopened on traffic moving from the eastern states to the cities of Oregon.

Prior to 1902 it had been the policy of all the transcontinental carriers to compete for Oregon traffic. The Union Pacific, with its allied Oregon Short Line and Oregon Railroad & Navigation Company, formed the most direct through route from the Missouri River to Portland, Oreg. The Southern Pacific, connecting at Ogden, regarded itself as a competitor for this business, by way of the Sacramento (Roseville) gateway. The Short Line and the Southern Pacific lines to Portland form a right-angled triangle, the Short Line being the hypotenuse and the Southern Pacific lines the other two sides. From Ogden the Southern Pacific extends through Nevada to Sacramento, and thence north through the Sacramento Valley, across the Siskiyou Mountains, into Oregon, thus forming an indirect route from Ogden to Portland, some 476 miles

longer than the direct route by the Short Line through Idaho. It was the policy of the Southern Pacific to meet the same rates to Portland, via Sacramento, that were made by the Short Line, and the traffic representatives of both companies competed for business out of and into this territory.

When Harriman obtained control of all these properties he virtually closed the Sacramento gateway by withdrawing transcontinental rates via that route. Traffic can still be moved across Nevada and up through the Sacramento Valley into Oregon, but it must move upon a combination of the transcontinental rate to Sacramento plus the local rate from Sacramento northward.

This petition is brought by certain business men in the Willamette Valley, out of the mistaken belief that this Commission has power to order carriers to compete with each other.

The Willamette Valley should be, and in fact is, one of the most fortunately situated pieces of land on the Pacific coast, from a transportation standpoint. It has access, through the Willamette and Columbia rivers, to the Pacific Ocean by water, and it had the full benefit of such strategic position before its river-boat lines came under the control of the railroads and were eliminated from competition. Traffic from the eastern states moves into this valley by rail, by all of the lines from the Mexican border to the Canadian border, excepting that traffic coming over the Union Pacific to Ogden is forced to follow the more direct line to Portland, rather than take the roundabout route by way of Sacramento. It can not be said, in truth, that there is any transportation necessity for the reestablishment of transcontinental freight rates to the Willamette Valley by way of the Sacramento-Siskiyou route, for it was admitted by one of the two witnesses for the complainants that the service given by the direct line was entirely satisfactory. That admission was not made as to rates, but as to service. The complainants feel that, while they are well served under present conditions, they are not in a position to receive the full benefit of their location, by reason of the fact that both the direct line and the indirect line are now operated under the same management, which has entirely destroyed the competition that previously existed between the north and south line and the east and west line, and thus has placed them on a lateral instead of a main line. The line from Ogden to Portland, by way of Sacramento, was chartered by the government to be operated as one continuous line, say the shippers, and was always so operated until the Harriman merger. The Willamette Valley and the country south thereof, was built up with the understanding that the government would keep this route open as against all other routes, but in 1902 this advantage was taken from them.

The following colloquy, between the Commission and counsel for complainants, sets forth the situation succinctly:

Q. You don't claim, I suppose, that you have the right to the same rate via a route which is 500 miles longer, do you? Take the shipper in the east at the Missouri River who wants to send something out to Oregon City. Here is a route that is direct, over which a certain rate, which we will assume is reasonable, obtains. Is there any reason why we should make a new route for him via El Paso or via Sacramento, so long as the rate that is charged is reasonably good? In other words, don't you have to show in that case that there is a public need? Isn't that a part of our function, to regard the interests of the people as a whole, and say, "Is it wise, and is it necessary that there should be such a route opened?"

A. I believe the people feel that way. They certainly would if they understood the situation they were in.

Q. Here is a direct line along the hypotenuse of a triangle, and there is no complaint about the service. Do you think you ought to come along the two sides of the triangle, and cross two ranges of mountains in order to get to the farther point?

A. I don't, as an original proposition, but when it comes to a point where conditions had been in effect for years and years and years, and business conditions have been adjusted with the former conditions in view, and here comes along a certain combination of carriers which takes away that privilege, then I think the Commission should do so; yes, I certainly do.

Q. That is to say, you think that because the carriers combined and cut out this other route, which would not have been possible for them if they had not combined, that we ought to restore the condition prior to 1902?

A. Yes, sir; I think so. That is all we are asking.

Q. Without showing that there is any necessity for it, so far as you are concerned, are you not fighting for something that is unsubstantial?

A. I think it is very substantial.

Q. That is what I want to find out. What is the substantial good that is to come to you if you prevail?

A. The substantial good in that event is, that under section 15 of the act the shipper is entitled to route his freight by any line he sees fit—by any way he likes.

Q. Now, then, if the route was open—we will say that it is open—we could not compel them to charge the same rate exactly; in other words, we can not compel the Southern Pacific, by the Sacramento route, to compete with the Oregon Short Line, can we? We can open a route there, or we can keep the route open; but if the Oregon Short Line chooses to make a one-dollar rate from Ogden to Portland, we could not compel the Central Pacific and the Oregon & California to make a one-dollar rate via Sacramento. That is a matter of competition, is it not?

A. Certainly it is a matter of competition. I do not think you could compel them to make a one-dollar rate, but I am very well satisfied that there should be some power somewhere, and we felt it was in the Commission to restore these conditions that formerly existed. If the powers are not within the Commission, we would like to know where they are. If the Commission decides they are not with them, we will look for some other relief; but there must be some avenue of escape somewhere, in reason, because these conditions could not have been brought about except by the consolidation of these carriers.

Q. What wrong do you suffer under by reason of the condition that exists to-day?

A. Why, we are eliminated from this additional route. We haven't the competition and the solicitation. There is no competition of any traffic there whatever, where formerly there were several lines.

When asked what benefit would come to him if the Ogden-Sacramento gateway were opened, Mr. Gile, one of the complainants, said:

It seems to me that we might be considered a terminal point if we had the Southern Pacific route, such as is now described as route 66 in tariff, at points in the Willamette Valley, instead of being considered on the branch line, as we are considered by the railroad people at the present time.

The situation, in a word, is this: Two routes, which were formerly under separate managements, have now been merged, and the traffic, for which there was formerly competition, is now forced by the rate adjustment to move over the more direct line. Regarding this arrangement from the standpoint of economy of transportation, the present condition is beneficial to the railways. So long as the public secures reasonable rates and prompt service by the direct line there is no substantial reason why the traffic should not follow the line of least resistance. There lies behind this complaint, however, the belief that there are benefits to be had from competition between genuinely rival carriers, which can not be gained when such competition ceases, even under governmental regulation.

The Sacramento gateway has not been closed. Traffic may still move, if routed that way, to Oregon points. The rate resulting from the combination on Sacramento is, however, so much higher than that by the direct Oregon Short Line route, that in effect the Sacramento gateway is closed. This condition calls not for an order establishing a new route but for an order establishing joint rates. And what should these rates be? Upon this question no issue has been here made and no evidence taken. Our power is limited to the establishment of reasonable rates and to the limiting of discrimination. We have recognized in many cases that the rates to Portland from the east are affected by water competition, and, from water competitive points at least, are a margin below the reasonable rate. This being true, it would be manifestly beyond the proper exercise of our power to establish the same rate to Portland, by way of a line that is 476 miles longer and impressed with greater difficulties of operation by reason of its high curvature and steeper grades, as obtains over the more direct and more easily operated route.

We can neither sever the Oregon Short Line from the Southern Pacific so as to give them reason to compete, nor can we establish rates over the Southern Pacific which would bring them into competition. Furthermore, it may be said that if the Sacramento gateway were still open as a real highway of commerce to southern and northern Oregon, the Commission would feel that this route, on eastern business, was so indirect that it might be permissible for the Sout

ern Pacific to meet the competition at Portland upon a basis that it should not be compelled to maintain at intermediate points; in other words, that it might make a route to Portland by way of Sacramento, notwithstanding its long haul, for the purpose of competing with the rate of the direct line, as well as water competition, and yet make higher rates to intermediate points. This is a policy which the Commission is pursuing in its application of the fourth section of the act.

If the theory of competition as between common carriers is to be abandoned, and the theory of regulated monopoly substituted therefor, it becomes evident, from this and affiliated cases, that such consolidations and mergers of existing lines as may be desirable should be subjected to governmental scrutiny, and permitted only upon condition that public benefit and not public injury shall result. The inevitable tendency of such combinations is to increase the burden of the public. Under a condition of monopoly carriers will insist upon securing what the traffic will bear, even as against the strictest regulation, whereas under competition concessions will be made by which industries will be developed and communities established. If the theory of monopoly is substituted for that of competition the rights of such industries and communities should be preserved.

Upon the record made an order of dismissal will be entered, reserving, however, the question of reparation upon transcontinental shipments to Willamette Valley points, which matter will be incorporated with and passed upon in the case of the *Railroad Commission of Oregon v. Southern Pacific Co.*, Docket No. 3842, not yet reported.

22 I. C. C. Rep.

No. 3680.
GEO. ALBREE
v.
BOSTON & MAINE RAILROAD ET AL

Submitted November 11, 1911. Decided January 8, 1912.

Complaint puts in issue what is known as the "New England system," or the leased-car system, as applied to the transportation of milk to Boston, Mass. Upon consideration of all the facts and circumstances disclosed by the record, *Held*:

1. That the leased-car system is not, if the tariffs are properly framed, unlawful.
2. That a per-can rate bearing a proper relation to the carload rate should be established.
3. That where, as to the city of Boston, milk must be handled under refrigeration, icing facilities should be provided when shipments at the per-can rate are offered from a given section equaling 600 cans per day.

George Albree for complainant in person.

James M. Swift, attorney general; and *Henry M. Hutchings*, assistant attorney general; for commonwealth of Massachusetts, interveners.

Arthur D. Hill and *Myron E. Pierce* for Massachusetts Milk Consumers' Association, interveners.

Ropes, Gray & Gorham; *Archibald R. Graustein*; and *John Richardson, jr.*, for Boston Dairy Company, interveners.

John F. Cusick for David Whiting & Sons, C. Brigham Company, and Elm Farm Milk Company, interveners.

Whipple, Sears & Ogden and *Charles D. Drayton* for H. P. Hood & Sons, interveners.

William H. Coolidge, *C. A. Hight*, and *Frederick Foster* for Boston & Maine Railroad and St. Johnsbury & Lake Champlain Railroad Company.

John T. Marchand for Interstate Commerce Commission.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This complaint puts in issue what is known as the "New England system" or the leased-car system as applied to the transportation

of milk to Boston, Mass. The complainant is a farmer living at Concord, Mass., and several other farmers by intervening petitions stand with him in asking that the above system be abolished. The attorney general of Massachusetts has intervened for the purpose of making the same demand in behalf of that commonwealth, and the Massachusetts Milk Consumers' Association joins in behalf of the consumers of milk in Boston and surrounding territory.

In the summer of 1910 the Boston & Maine Railroad filed tariffs withdrawing the leased-car rates, whereupon D. Whiting & Sons, the Boston Dairy Company, and H. P. Hood & Sons filed separate petitions praying that the prospective tariffs be suspended and the original tariffs continued. The Commission did temporarily suspend the effect of the new tariffs and a hearing was had upon these petitions; but before the case had been argued and submitted the Boston & Maine voluntarily withdrew its schedules which were under suspension and filed other schedules restoring the leased-car system at somewhat higher rates, whereupon the complainants withdrew their complaints. The above parties have now intervened against the prayer of the petition, and the record in the cases brought by them, which was extremely voluminous, has been introduced and made a part of the record in this proceeding. These latter parties are, for convenience, designated in this report as the "operators."

The issues presented will be best understood by first giving the rates themselves, then explaining the manner in which this system has grown up and its alleged advantages, and, finally, stating the objection to the system itself. The rates need not be given in detail, since their reasonableness is not here in controversy.

Whenever in this opinion the term "can" is used, one containing $8\frac{1}{2}$ quarts is meant, that being the standard unit in which milk for the Boston market is handled.

The tariffs of the Boston & Maine Railroad establish rates of different kinds for the transportation of milk.

First, there is a distance tariff per can. This applies between all points upon the defendant's railroad and is open to all shippers alike who desire to make shipment in that manner. This tariff specifies that the milk will be carried in baggage cars and that no icing will be furnished.

Second, there is what is termed a carload rate. The Boston & Maine Railroad transports in both directions a milk car between certain points of origin and destination for so many dollars per annum. Professedly, the amount charged depends upon the distance, and is, at the present time, at the rate of \$125 per mile per year from 1 to 75 miles, with an addition of \$112.50 per mile beyond 75 miles and up to 125 miles, and a further addition of \$75 per mile for all distances over 125 miles.

[illegible]

understood from an examination of the manner in which the handling of Boston's milk supply under the present system has developed.

Southern New England is densely populated. The city of Boston can draw no milk from the east or the south. It was said in testimony that comparatively little of the Boston supply originated within 50 miles of that city. About 50 per cent is obtained from territory more than 100 miles distant. To-day the city of Boston in reaching out for its milk supply covers the entire states of Massachusetts, Vermont, and New Hampshire, and also extends into New York, Maine, and the southern part of the province of Quebec.

The country from which this milk supply is drawn is hilly, rugged, and, to a considerable extent, waste land. The farms are small, and the production from a single dairy is small. It was said that the output of the average dairy supplying the Boston market is 10 cans per day.

The total quantity of milk delivered at a single railroad station each 24 hours runs from 50 to 200 cans, the average being less than 100 cans.

In the past the method of developing a milk business under this system has been as follows: The person desiring to ship milk into the city of Boston from a given section goes among the farmers in that vicinity and contracts for the delivery at the railroad station of a certain quantity of milk. These contracts are generally for the term of six months and usually cover the entire product of the farmer's dairy, although some limit as to the amount which shall be furnished and that which shall be received is specified. The farmer will not ordinarily divide the product of his dairy, but he can name certain limits within which that production will run.

When the operator has contracted for the delivery of his milk at certain specified railroad stations he notifies the railroad company to put on the car, whereupon the tariff is filed and the car put into operation.

The testimony shows that ordinarily these milk cars are not at first filled to their capacity, and it was said that they are not ordinarily profitable at the outset, but business is soon developed which loads the car fairly well. If a car can not in any section be loaded with a sufficient number of cans to justify its operation, the service of the car is discontinued. The contractor does not, as we understand the matter, agree to operate these cars for any given length of time.

It has already been noted that in many cases milk is transported by freight, the rate per car of the same capacity having formerly been 50 per cent, and being now 75 per cent in cases of cans and 65 per cent in case of tank cars, of the passenger rate for corresponding distances. The operation of these freight cars becomes possible in view

of the practical conditions under which milk is handled for the Boston market.

The principal delivery of milk in the city of Boston is in the morning, and it was said that milk arriving in Boston before 3 a. m. could be delivered the same morning to customers. Undoubtedly, in many cases delivery is made where the arrival is much later, but generally this length of time is required to prepare the milk for its delivery. Milk is also delivered in the evening to some extent, but such deliveries are usually made before 6 o'clock, and milk for the evening service must be in Boston not later than 3 or 4 o'clock in the afternoon. It will be seen therefore that as a practical matter it is immaterial whether a carload of milk is received at the plant of one of these operators at 5 o'clock in the afternoon or at 3 o'clock the next morning.

From comparatively near-by territory milk which is drawn in the morning or the previous evening can be laid down in Boston in time for the afternoon delivery, but the bulk of the supply of that city originates at points so far distant that more than 24 hours must elapse between the time the milk is drawn from the cow and delivery to the consumer. It is found, therefore, that milk can be concentrated by passenger train at points in the country from 100 to 150 miles from Boston and there loaded into a refrigerator car and taken to Boston by freight. In availing themselves of this freight service the milk operators have established at different points in the country creameries where milk can be concentrated and sent on to Boston, the surplus milk not required for the Boston market being retained and used at that point.

The Boston Dairy Company, for example, has established at Bellows Falls, Vt., a plant for the manufacture of condensed milk. In the conduct of the business of that company large quantities of milk are brought into Bellows Falls by passenger train, where such portion of it as the Boston market demands upon any given day is pasteurized and placed in a huge glass tank which contains some 1,200 cans, and is so arranged that it can be refrigerated to the proper temperature. In this tank car the milk is carried by freight to Boston, where it is taken from the tank, bottled, and distributed. What of the milk it is not desired to send into Boston is condensed at the condensing plant.

While no other operator has facilities of this kind and while all other operators handle their freight shipments in cans instead of in tank cars, the same procedure is, in essence, followed at various points. Since the freight movement from these concentration points is not only a cheaper grade of service, but can uniformly be made in practically full carloads, it is evident that this method involves a substantial saving in transportation cost.

The above system of transporting milk is peculiar to New England, where it has been in effect for the last 50 years. The b

of supplying Boston and surrounding territory with milk has grown up under this system. To-day the larger part of Boston's milk supply is purchased in the country and brought to that city by the three concerns previously designated as operators. The Boston & Maine Railroad, which is the principal defendant in this proceeding, announces that under the peculiar circumstances, it will accept the decision of this Commission, and that it is a matter of comparative indifference to it whether the present system is continued or the per-can system adopted, provided it be allowed to impose reasonable charges, in proportion to the cost of the service rendered. The operators therefore assume the burden of showing that the system now in force should be continued, and we may properly consider the reasons which they allege in favor of that system before coming to the objections which are urged by the complainants against it.

The superiority of the New England system, according to the operators, is found in the greater economy which it offers over the other. This arises from several considerations:

1. The first, as enumerated by them, is the caretaker.

It is conceded by all parties that these shipments of milk must be in refrigerator cars, and that some attendant must accompany the car for the purpose of seeing that it is properly iced and of receiving the cans of milk at the different stations. Under the present system this person is the employee of the operator, who owns the milk transported in the car. Under the system for which the complainants contend this person would be an employee of the railroad. The operators contend that the present arrangement makes a material saving in the handling of this milk, for the following reasons:

(a) The caretaker comes into almost daily contact with the farmer, who brings his milk to the station and delivers it into the car. He is therefore an intermediary between the operator in Boston and the producer in the country, who can convey, by word of mouth, any suggestion or requirement more satisfactorily than could be done in any written communication.

(b) It is necessary that each can should be designated by some identifying mark of the farmer from whom it comes, so that the factory may know the origin of the milk which it handles. There is a continual disposition upon the part of the farmer to deliver milk not properly identified, by the mixing up of cans or otherwise. The caretaker, representing the operator, declines to receive milk which is not properly identified, and thereby prevents a great amount of friction between the farmer and the contractor.

(c) It is frequently necessary to reject the milk of a particular farmer for various reasons. Under the present system the caretaker can make such examination of a particular dairy, at the station, as will determine whether this milk should or should not be

accepted. In this way the transportation of the milk to Boston and its transportation back to the country station is avoided. The testimony showed that a considerable per cent of all the milk handled would be rejected at the factory and sent back unless inspected at the station by the caretaker.

(d) In the actual handling of this milk certain dairies are used for certain deliveries, and the products of certain of these dairies are frequently required to be kept in such a portion of the car that they can be first taken out when the car reaches its destination. Matters of this kind can be handled through the caretaker when he is an employee of the operator, but could not be if he were a railroad representative.

The operators insisted that for the above and numerous other reasons the expense of handling their milk would be largely increased if they were deprived of the privilege of putting onto these refrigerator cars by which the milk is transported their own employee, and that this would represent to them in the course of a year a very considerable amount of money. While this aspect of the case does not impress us as strongly as the operators would have it, still it is evident that there is in this particular a very great convenience to the owner of the milk, which must mean a very considerable saving in expenditure. The operators undertook to estimate the number of thousands of dollars which this item represented, but nothing in this record justifies a definite finding upon that point.

2. A more important consideration is the heavier loading obtained under this system.

It is well understood that carload are usually lower than less-than-carload rates, for the reason mainly that carload shipments involve a much heavier loading of the car upon the average than less than carload. This reason is especially forceful where the shipment is under refrigeration and involves the services of an attendant. The cost of icing and operating one of these cars from a given point to the city of Boston is substantially the same whether that car contains 100 or 1,000 cans.

It is evident that under the New England system cars will be loaded to substantially the minimum, which is 1,050 cans. The operator will not ask for the putting on of a car until his contracts for milk are sufficient in amount to justify the request, and when once the car is in operation it will be his continual effort to load it at its capacity. Upon the other hand, since he is under no obligation to purchase any given quantity of milk, he will so gauge his contracts that the amount delivered will not exceed the car's capacity. All this insures a uniform loading to the practical capacity of the car.

The manner in which passenger and freight movements are combined in the operation of these leased cars and the resulting reduction in the cost of transportation has already been referred to.

must be evident that under the per-can system this would mainly disappear, since it is only possible to use freight service, as it is now used, by combining shipments at certain points, which can only be done to advantage when a single shipper, or, at most, two or three shippers, control the movement.

There can be no doubt that the defendant railroad is justified, looking to the cost of the service, in establishing rates for these leased cars which will result to the operator in a materially less charge per can, upon the average, for the milk carried than any per-can rate which it could reasonably be required to establish if it furnished the icing facilities itself and took the consequent chances of the lighter loadings and the less economical movement.

In this connection it should be noted that in few if any portions of New England is the production of milk sufficient to justify the putting on of an exclusive milk train as is done in case of the transportation of that commodity to New York and perhaps to some other cities. The milk supply of Boston must be carried upon the present trains running upon substantially the present schedules, as best it can.

3. Another consideration urged in favor of the present system is the terminal situation.

To-day all the large operators have provided, in the city of Boston, facilities for receiving and handling this milk. Those plants have cost in some cases very large amounts of money. In no instance is the plant of two different operators in the same immediate vicinity. In some instances, and perhaps in all, each operator has facilities for receiving milk at two or more different places.

The car of a particular operator is delivered at the plant of that operator, where the milk is unloaded directly into the factory and cared for.

The objection of the complainants to the present system is, as will be explained presently, that each of these great operators has a monopoly of the purchase of milk in the territory in which he buys. Their purpose is to break up this system of monopoly, so that a farmer in any section of New England may ship his milk to any independent dealer in the city of Boston, so that the great operators themselves will purchase indifferently in all territories.

It is evident that, if this object is attained, every carload of milk reaching the city of Boston would contain cans for delivery to many different dealers. Now, where shall this delivery be made?

To require each dealer to receive his milk at the passenger station, for example, of this defendant in Boston would involve a wagon haul of possibly several miles, which would be expensive and would often expose the milk to an unduly high or an unduly low temperature

Evidently, in the handling of this milk it should be taken directly from the refrigerator car into the place where it is to be bottled and stored pending a delivery.

It has been suggested that a certain part of the milk might be taken out at one place and the car then switched to some other place, but this would manifestly be impossible and would involve delay and discrimination.

It might be possible to establish some central milk station at which all milk would be delivered, but this would almost of necessity require the abandonment of the plants now provided and the erection of others in close proximity to the point of delivery.

While this phase of the matter was not much discussed, it is evidently a most serious one. Looking only to the transportation of this milk, it is evident that the present system, which enables each contractor to place each carload exactly where he desires to use it and where he has the facilities for handling it, is far the most economical, and, in every way, the best.

4. The item of surplus milk is dwelt upon as important.

The quantity of milk consumed in Boston varies greatly from day to day, especially in the summer. Whoever is prepared to meet the maximum demand must contract for and receive in the country on ordinary days a much larger quantity of milk than can be sold in the city of Boston. What to do with this overplus is a difficult problem.

The cost of transporting milk from the country to Boston is much greater than the cost of carrying the butter or the cream which that milk will produce, and it is therefore desirable to use up this surplus at country points as far as possible. The present system lends itself to the accomplishment of this, since the operator by properly adjusting the routes over which his cars run and properly locating his country creameries can intercept a large portion of the surplus on its way to market from day to day at some country point where it is manufactured into butter or condensed milk.

After this has been done, however, a considerable quantity of milk still reaches Boston which can not be sold as milk, and this must be manufactured into butter and used for other purposes. These operators maintain creameries at which this is done.

The operators claim, with much show of truth, that it would be impossible to maintain the present price to the farmer without any increase of price to the consumer if all the surplus milk were shipped into the city of Boston and disposed of there. In New York this factor seems to be taken care of at the point of production by locating a creamery at the station where milk is received for transportation, so that whatever is not required each day for use as milk can be manufactured into butter, cheese, or cream. Ordinarily this

is impossible in case of Boston's supply, for the reason that the territory adjacent to a given station is not sufficient to justify the maintenance of a creamery. Even if this were possible the service to New York on their exclusive milk trains is much quicker than that to Boston upon the regular trains, so that the quantity of milk required can be better regulated at the country point in case of New York than in case of Boston.

5. It has been already said that the New England system has been in effect for the last 50 years, and that the present methods of handling milk have grown up under that system. The operators have provided, in the conduct of their business under that system, certain facilities both in the country and in the city.

They have erected at the country stations platforms and, in some instances, sheds, upon which the cans of milk are placed while awaiting the arrival of the train, and upon which the empty cans are discharged when returned.

Ice houses have been erected at convenient points for storing the necessary ice used in the refrigeration of these cars and the handling of the milk.

Creameries and similar facilities have been provided at various country points for the purpose of taking care of the surplus milk, and, in some instances, separating the milk from the cream.

Extensive facilities have been erected in Boston for the receipt and distribution of this milk.

The operators urge that if the present system is supplanted by the per-can system, these facilities will be of no value, and that serious financial loss will thereby be entailed.

It is undoubtedly true that outlays of this character have been made by these operators; that this has been done upon the belief that the present transportation system would be continued; that if the leased car were to be prohibited these facilities would, in a measure at least, cease to be of value to their owners, and that financial loss to them would thereby ensue. This loss would inevitably be considerable, and might be very considerable, depending upon various circumstances.

6. The operators point to certain regulations touching the sale of milk adopted by the state of Massachusetts and the city of Boston, which virtually prohibit the handling of milk in small quantities, as desired by the complainants.

The state of Massachusetts prohibits the sale of milk which does not contain a certain percentage of solid matter. Milk as drawn from the cow does not always fulfil this test, and it is not enough therefore to be certain that no adulteration has taken place in order to be confidently within the law. It is necessary, in addition, that milk shall be carefully tested for the proportion of solid matter which it contains.

The city of Boston provides that no milk shall be sold which contains more than 500,000 bacteria to the cubic centimeter. Since the number of bacteria contained in freshly drawn milk varies greatly and since that number may multiply rapidly, it becomes necessary to determine the bacteriological condition of the milk offered for sale from time to time.

These two regulations, one by the state and the other by the city, require the maintenance of a laboratory with proper appliances and a corps of experts by whomever lawfully handles the milk supply of Boston.

The city of Boston also provides that no milk intended for sale shall be suffered to attain a temperature exceeding 50 degrees F. This makes it necessary not only to transport the milk from the farm to Boston in refrigerator cars during a considerable portion of the year, but also to refrigerate the milk in Boston from the time it is received until it is delivered to the consumer.

A considerable portion of the milk consumed in Boston is retailed by stores. Formerly, the store purchased the milk at wholesale and retailed it to the consumer in such quantities as might be desired. A regulation of the city now requires that all milk shall be handled by these stores in sealed bottles. This means that the greater part of the milk supply of Boston is handled in sealed packages. The proper cleansing of these bottles and the bottling of the milk itself can be best done by machinery.

Each of the large operators has provided, at various points, facilities for the testing and the bottling of this milk. They have also provided, in that connection, facilities for the pasteurizing of the milk.

There seems to be some dispute as to the extent to which milk should be pasteurized. The evidence in this case indicates that if the source of supply can be properly policed for unsanitary conditions and the milk taken from the cow to the consumer within a comparatively few hours, pasteurization is a damage rather than a benefit. But when the conditions under which the milk is drawn can not be properly supervised, and especially when a considerable period is to intervene between the milking and the consumption, pasteurization is not only helpful but absolutely essential. While something may be lost in the quality of the milk, much more is gained in the way of safety from disease and infection.

At the present time all milk handled by the large operators is pasteurized, with the exception of the product of certain dairies which is sold as "certified" milk for a price above that charged the ordinary consumer.

The foregoing are some of the principal reasons alleged by the operators for a continuance of the present system. The objection of

the complainants to that system is, as already indicated, that it has created and must perpetuate a monopoly in the handling of Boston's milk supply.

We have seen that owing to the conditions under which this milk is produced only a single car can be profitably operated from the same territory. It must follow that all milk producers in that territory desiring to ship milk to the Boston market must patronize the contractor who operates that car. As a practical matter, they must sell to him or they must make some other use of their milk.

From this it must further follow that the milk-producing territory of New England will come to be divided into sections, each section being exclusively occupied by a single operator. And this is precisely what has happened. There are to-day three principal operators purchasing milk for the Boston market. While these operators do not handle the entire supply they do handle, either through themselves or through affiliated companies which they own, the greater part of that supply. Except in rare instances but one operator buys in a given territory. One instance was shown in which a certain territory had been sold by one operator to his rival for a named consideration. It is not only the necessary logical conclusion but is the demonstration of actual experience that the application of this transportation system has produced, either alone or in conjunction with other causes, this condition in the purchase and transportation to the city of Boston of its milk supply.

This does not necessarily mean that there is no competition in the sale of milk in the city of Boston itself. These operators assert that they do actively compete with one another in that respect, and no agreement or understanding was shown which tended in any way to limit that competition nor to fix the prices at which milk should be sold. Neither is it true, as might be inferred, that these three concerns exclusively operate the milk routes by which this milk is distributed to private houses. A few such routes are operated by persons who derive their supply from territory in near proximity to Boston, and in many instances the supply is obtained from these large operators, one of whom showed that 29 per cent of all the milk brought by it into the city of Boston was sold to the owners of milk routes, who distributed it to private takers, while but 18 per cent was so distributed by the company itself.

Still, while there may be no agreement and no express understanding between these large operators as to the price which shall be charged or the territory in which it shall be sold, it must follow, almost of necessity, that when the business is so concentrated there will come to be a common understanding, even without express agreement, which will prevent anything like competition in the price. There probably would be competition in the quality, since if the price

were the same this would determine by whom the milk was to be furnished.

We think it must be found that the tendency of the present system is to concentrate in the hands of a few concerns the purchase, transportation, and sale of the milk consumed in Boston and the immediate vicinity.

Having stated the facts upon which the parties base their contention for and against the present system, we now proceed to inquire what inference is to be deduced from those facts and what bearing that inference has upon the questions before us for determination.

The operators claim that to discontinue the present system would destroy investments which they have made upon the belief that that system was to continue; and this is undoubtedly true.

This Commission has frequently held that where money has been expended upon the strength of a given rate adjustment, neither the carrier nor this Commission should change that adjustment without considering the effect upon such investment. But an unlawful rate does not become lawful simply because to declare it unlawful will work destruction to property interests which have developed under the maintenance of the unlawful rate; nor should carriers or this Commission refrain from a change in rates simply because it destroys property interests. It often happens, and perhaps usually happens, that a departure from present methods which is clearly for the public good involves an immediate loss, due to the throwing away of what the change makes worthless.

While in this case we must have in mind the effect upon the property investments of these operators, we can not be controlled by that consideration.

The above facts show that the present system, so far as the matter of transportation goes, is more economical than that proposed by the complainants, and this is a thing of consequence.

Just the extent to which the present method permits a saving in transportation expense can not be said. The operators have shown, in considerable detail, the increased cost to them if the per-can system were to be established, and these amounts run into many thousands of dollars annually.

In *Milk Producers' Protective Association v. D., L. & W. R. R. Co.*, 7 I. C. C. Rep. 92, this Commission prescribed rates by the can for the transportation of milk from producing points in New York to New York City. It is difficult to see how we could prescribe a less rate in case of Boston, although no opinion is expressed upon that point.

The Boston Dairy Company shows that the cost to it for a given year of transporting its milk from the country station to Boston would be, under rates equivalent to those prescribed by this Commission in the *New York case*, substantially 6.47 cents per can while

the cost to it of the same service under the leased-car system, combining as it does freight and passenger service, is but 8.65 cents per can, an increase of approximately 75 per cent.

The other operators show a somewhat smaller increase, but in no case less than 33½ per cent.

During the month of August, 1910, the Boston & Maine Railroad maintained in the state of Massachusetts per-can rates substantially equivalent to the New York rates, and the result of that month's operation was presented to the Commission. The Boston & Maine earned net almost exactly what it had earned under the leased-car system, while the shippers paid something over \$100 per day more. About 30 per cent of all the milk reaching Boston originates in the state of Massachusetts.

What the difference in expense would be must depend upon the per-can rate finally established if that system were to be put in operation. Assuming that the same rates were to be named for Boston as for New York, it is still impossible to say, except by actual test, what the difference in expense to the shipper and in net result to the railway might be. After considering everything which has been shown no definite conclusion can be stated. It is our impression that the increase to the shipper upon the basis of the New York rate would be at least 20 per cent. The operators and the Boston & Maine assert that it would much exceed this figure.

It is our further impression that the net result to the railroad would be as favorable under the present leased-car rates as under the above per-can rate; that is to say, the increase in cost to the Boston & Maine of performing the service would equal the increase in charge to the shipper. If these impressions are true, to supplant the present system with the per-can system would mean, considering this entirely from a transportation standpoint, an increase of 20 per cent in cost without benefit to the transportation company.

In the end there must be a relation between the cost of the service and the charge to the public for that service. If the character of the service performed is so changed by public mandate as to increase the expense of performing that service by 20 per cent, then the public must expect to pay 20 per cent more for the performance. It is therefore for the public interest that every transportation service should be performed by the most economical method, since that must ultimately result in the lowest transportation charge. Looking at this matter exclusively from the transportation standpoint, the carload system should, if possible, be retained upon the score of economy.

Transportation is not, however, the only factor in this milk problem. It is said that the present system produces monopoly. The tendency of monopoly is to deteriorate the quality and to enhance

the price. Competition, upon the other hand, tends to force down the price and perhaps improve the quality. It might therefore happen that the farmer would obtain more for his milk and the consumer pay less under a transportation system where the mere cost of carriage was greater than at present.

But this would not follow unless the per-can system introduced competition in the purchase and sale of this milk, which does not now exist, and it is certainly doubtful whether this result would follow.

One of the interveners, representing the milk consumers of the city of Boston, favored the breaking up of the present method in order that there might be established a transportation system which would bring the milk from the dairy in its natural state immediately to the consumer. This was said to be especially in the interest of the poor children of that city.

Certainly no more laudable purpose could be suggested than to provide the people of Boston with an adequate supply of wholesome milk at a reasonable price. It would be most desirable if the milk could be drawn in the morning and placed in the hands of the consumer by noon, or at least during the same day, which seems to be the thought in the mind of this intervener. But while desirable, such a condition is impossible. A few wealthy families, who can pay from 10 to 15 cents per quart, obtain what is known as "certified" milk; that is, milk produced in a dairy properly policed and brought immediately from that dairy to the consumer. Not only the poor children of Boston but the well-to-do children must drink milk, for the most part, which has been drawn from 24 to 36 hours. This milk can not, with proper regard to safety, be taken to the consumer without being refrigerated and pasteurized—without, in a word, plants where precisely what these operators do is accomplished.

Such facilities can not be furnished upon a small scale. They involve a large outlay of money to erect and operate, and they can only be made available where large quantities of milk are treated.

The peddler who distributes milk over his route to private takers can not, as a rule, obtain his supply from the country. He must get it from the operator in the city, who can refrigerate it, test it, pasteurize it, bottle it; who can deliver to him what his necessities require from day to day, taking care of the surplus. The instances where the peddler does obtain his supply direct from the dairy are comparatively few to-day and are growing continually less.

The very regulations of the city of Boston make it impossible to handle this business by a great number of independent operators. While the introduction of the per-can system would possibly permit and induce in some few instances the shipment of milk to others than

If these tariffs contained the general statement that upon reasonable notice the defendant would operate on its regular trains, passenger or freight, these milk cars at a given rate per mile, there is no apparent reason why the tariff would not in principle be a legal one.

It might happen that the actual operation of these cars under the rate established would work out a practical discrimination against the per-can shipper, but this would result not from the unlawful character of the tariff or the service, but from the relation in the rates named.

The Boston & Maine Railroad does not, however, discharge its full duty to the milk-shipping public by providing a rate for the movement of that commodity in carloads. Where an article is shipped both in carload and less-than-carload lots the carrier must provide a less-than-carload rate and can not confine the movement to carloads. Milk is habitually moved by the can, and the Boston & Maine as a common carrier must provide a reasonable rate for the per-can movement.

That defendant already has in effect a mileage per-can rate applicable to the movement of milk upon all parts of its system, but the complainant objects that this rate, as a practical matter, is not available for the shipment of milk to Boston. Most of the milk consumed in Chicago, St. Louis, Baltimore, and Philadelphia is not iced in transit. When the Commission heard the *New York case*, icing was not generally provided for as a part of that transportation service.

One of the regulations of the city of Boston for the handling of its milk is that it shall not exceed a temperature above 50 degrees F. It is probable that the Boston & Maine would be liable to a penalty if milk was found in its possession intended for use in the city of Boston which exceeded this temperature, and, certainly, the dealer who took it from the car at Boston would be in contravention of that regulation. It is necessary therefore that milk should reach Boston in the car at a temperature not exceeding 50 degrees, which requires, for half the year, icing facilities. Milk can be shipped in the baggage cars of the Boston & Maine under its tariffs to any other point of consumption, like Lowell or Lawrence or any of the cities which surround Boston; it can not, as a practical matter, be sent to Boston, for six months in the year, without refrigeration. The real question, therefore, is, Must the Boston & Maine, in discharging its duty as a common carrier, provide icing facilities for the handling of these per-can shipments?

That company insists that it has discharged whatever duty rests upon it in this respect by providing for shipment in the leased cars, wherever they are operated, of the milk of independent producers. Under those tariffs, and as a condition of the putting into service of

the leased car, any person desiring to ship milk from any station at which that car stops to the city of Boston must send it in the operator's car, paying to the operator the rate per can specified in the Boston & Maine tariff plus an additional charge of $\frac{1}{2}$ cent for icing. The complainant contends that the defendant can not perform its duty in this way, for the reason that an independent shipper can not be compelled to deliver his property into the hands of his competitor and expose his business to the knowledge of that competitor.

This contention of the complainant is, in our opinion, well taken. The fifteenth section of the act to regulate commerce contains the following provision:

It shall be unlawful for any common carrier subject to the provisions of this act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor.

The above language clearly indicates an intent upon the part of Congress to secure to every shipper immunity from a disclosure of his business at the hands of a common carrier. Clearly the Boston & Maine is not within the provision when it compels a shipper to deliver his property into the hands of his competitor for transportation. It is further apparent that in this case where all parties are buying in the same section and selling in the same market there might be special reason for the enforcement of the above rule.

It perhaps should be said that while considerable quantities of milk are handled by independent shippers in the cars of these operators, no complaint has been heard from anyone so shipping. Upon the hearing the Commission ascertained the names and addresses of as many of these so-called independent dealers as possible, sending to them its representative for the purpose of ascertaining their attitude in this controversy. No one was found who desired to complain, even in private, as to the present situation.

This, however, while it indicates the fairness of the present operators, can not affect our interpretation of the statute. Confining our attention to the case presented, we hold that a shipper can not be required to deliver his milk for shipment and icing to the operator of one of these leased cars, and that in so far as the Boston & Maine Railroad rests under a duty to provide icing facilities it can not discharge that duty by this method.

The ultimate question, then, is, Must the Boston & Maine Railroad furnish icing facilities for its per-can shipments of milk?

In the past there has been much discussion and wide difference of opinion as to the liability of railroads to furnish refrigeration service when that was necessary in the carriage of commodities by rail. It is not necessary, nor would it be profitable, to review, at this time, that discussion, since the whole subject was laid at rest by the Hepburn amendment of 1906, which, by an addition to the first section, included refrigeration in the term transportation, and required carriers to furnish the same "upon reasonable request." Under this provision it is the duty of the defendant to furnish this refrigeration service when requested provided that the request is a reasonable one.

A farmer living 200 miles from Boston desires to ship 10 cans of milk to a customer in the city of Boston. No other milk is offered for shipment at that station or in that vicinity. Should the Boston & Maine be required to furnish icing facilities for the transportation of this milk?

It seems clear that it should not. The only way in which, as a practical matter, these facilities can be furnished is by the operation of a milk car in charge of an attendant. The defendant should not be required to run this car unless it can carry a sufficient quantity of milk to make its operation at a reasonable icing charge fairly remunerative. To apply a contrary rule would not be in the interest of the general public. While the Boston & Maine is required to furnish refrigeration it may exact fair compensation for that service, and what is fair must be determined with respect to its service as a whole. To require it to operate these cars for less than a paying load would be to necessitate the imposition of an unjust refrigeration charge upon shippers so situated that a full load can be provided. In our opinion it is not reasonable to require of the defendant the furnishing of icing facilities for per-can shipments unless milk is offered for transportation at the per-can rate in sufficient quantities to justify the running of a car. We are of the opinion that upon reasonable assurance that at least 600 cans of milk will be offered the defendant should put in operation a car, but that it should not be required to do this for a less number.

When we say that 600 cans of milk should be offered in order to require the installation of a milk-car service, we mean this quantity should be tendered for shipment at the per-can rate, not that the entire quantity of milk originating in a given section should equal that amount. Here are 1,100 cans of milk offered for shipment, of which 1,000 cans are sold to the operator for transportation in his car, while 100 cans are tendered for shipment by the can. The 1,000 cans go, possibly, to some concentration point, from which it is sent on by freight.

It is evident that we could not require the Boston & Maine to establish a tariff for the transportation of the 100 cans at a reasonable

refrigeration rate and at the same time require it to operate the leased car at the carload rate. If we require the railroad to put on this iced car, we must permit it to fill that car, provided sufficient milk originates in that section for that purpose. In other words, as conditions exist in New England, it is impossible to maintain in effect at the same time in the same section these two systems. To put in the per-can system is to abolish the leased-car system, and this was practically conceded by all parties.

Now, to put in the per-can system upon the whole Boston & Maine Railroad is to materially increase the price of transportation, and this, as appears from the record before us, must mean a reduction in the price paid the farmer, without any corresponding benefit to the consumer. We do not think that it is our duty to impose upon the Boston & Maine a requirement, at the demand of these 100 cans, which will compel the producers of the 1,000 cans, which prefer the other system, to accept a less price for their milk. When milk is offered for shipment by the can in such quantities that the Boston & Maine can provide a milk car at a reasonable charge, then it is its duty to do so, but until such offerings are made it is not, in our opinion, reasonable to require it to furnish refrigeration facilities.

Nor do we think that this imposes any undue burden upon the shipping public, nor gives to the operators of these leased cars any undue advantage, for the reason that if there is any considerable demand for a per-can movement the necessary facilities must be provided by the railroad. If any milk dealer or any combination of milk dealers in the city of Boston, if any farmer or any combination of farmers in the country, can offer for shipment not less than 600 cans of milk, it is the duty of the Boston & Maine Railroad, under our holding, to put on a milk car. If there is no demand for a per-can movement to that limited extent, we feel that the defendant can not be reasonably required to furnish these refrigeration facilities.

The per-can rate may be so high as compared with the carload rate as to give to the carload shipper an undue preference. If the Boston & Maine did operate a milk car upon its per-can schedule the cost of transportation by that means might be so much more to the independent shipper than the cost of transportation under the leased car to the operator as to give to the operator a virtual monopoly of the business. Manifestly these two rates must be properly adjusted with reference to each other. If the present relation is wrong, it may be inquired into and corrected, but in this record no such question has been presented.

The attorney for the Boston & Maine Railroad stated upon the argument that no person actually desiring to ship milk under the rates attacked had appeared in connection with these proceedings

either as a complainant or a complaining witness; and this is true, remembering that the rates in question are those applying not to the state but to the interstate movement of milk. No farmer producing milk which can be shipped under these rates is, so far as this record shows, dissatisfied with the present system. No dealer in the city of Boston desiring to ship milk from the country under these rates is, so far as we can ascertain, complaining. Certain farmers of the state of Massachusetts do protest, and the attorney general of the state of Massachusetts joins this protest in the name of that commonwealth. This suit is an attempt upon the part of Massachusetts to compel the withdrawal of the leased-car system from territory without that state, and the reason for this is to be found in the legislation of Massachusetts touching the transportation of milk.

As already stated, three large operators at the present time purchase in the country and transport to Boston the bulk of the milk which supplies that city. It has been further noted that these operators enter into contracts with the farmers covering usually a period of six months for the furnishing of this milk at the different railroad stations. These three concerns have handled the milk of Boston for several years past substantially as they do to-day.

It had come to pass that the farmers had also combined so that they were represented by an association of producers, and whenever the time came for a renewal of these milk contracts with the farmers the matter of price, etc., was taken up between the operators upon the one side and this representative of the producers upon the other. Since but a single operator purchased in a given territory the producers were, in these negotiations, apparently at the mercy of the operator.

The result was that the farmers who, with increasing cost of production, were demanding an increased price for their milk, found it extremely difficult to enforce that demand, and they naturally attributed this difficulty to the fact that there was no competition in the purchase of their product. It seemed to them that the main reason why but a single buyer came into their territory was to be found in the system of transportation under which this milk was handled. As often, therefore, as difficulty arose over the price to be paid the farmer there was an outcry upon the part of the farmer against the carload system, and this led to a continual agitation of the milk rate.

In the spring of 1910 this dispute between the producer and the operator reached an acute stage. The farmers demanded an increase in price, which the operators refused. Thereupon the farmers struck and declined to furnish milk except at the price demanded by them. The operators made most strenuous efforts to obtain milk from other sources and succeeded in supplying Boston, after a fashion; but the attention of the public was sharply drawn to this situation in which

the consumers of milk in the city of Boston were apparently at the mercy of these contending factions. It was said and believed that the leased-car system was responsible for the condition and that had the railroads bringing in Boston's milk supply been operating under a per-can system the situation could not have arisen.

The Massachusetts legislature, which was then in session, investigated the matter, and finally enacted what is known as the Saunders bill. This bill provides that no railroad company shall apply to the transportation of milk by the can a higher rate than is charged for the transportation of milk in large quantities, and that it shall furnish the same facilities in the one case as in the other. It further provides that the rate charged by the can shall be no greater upon any part of any railroad in that state than is charged for a longer distance upon any other part of that railroad.

Under this bill the Boston & Maine Railroad is obliged to receive upon any part of its system in Massachusetts a single can of milk, giving to the transportation of that can the same facilities and the same rate at which it would receive and transport a carload of milk. That system has been in effect in the state of Massachusetts since August 1, 1910, and is still in effect.

The rates established by the can are as low and perhaps somewhat lower than those fixed by this Commission in the *New York case*. There is no allegation in this case that they are unreasonably high, nor that they are not fair per-can rates as compared with the carload rates which the operator enjoys under the leased-car system. They do, however, result in a distinctly higher transportation charge than the carload rates in effect between interstate points and Boston, as they properly may and should. The result is that the Massachusetts farmer is paying more for the transportation of his milk than are farmers in adjacent states.

The record further indicates that up to the present time this Massachusetts milk has been sold to the same operators who formerly bought it and who still buy milk in adjoining territory. These operators have reduced the price to the Massachusetts farmer by just the amount of increase in the transportation charge. It follows therefore that the producer of milk in Massachusetts is to-day paying a higher rate of transportation and receiving a less price for his milk than is the producer in surrounding territory. It is this discrimination against the Massachusetts farmer in price which is really attacked in this proceeding.

It is claimed by the operators and suggested by others that this legislation was hastily and inadvisedly enacted and that it will at an early date be repealed. We do not so understand the situation. The governor of the state was asked to interfere before the Saunders bill went into effect as well as after, and declined to do so. One

legislature has intervened since the passage of that act without any modification of the original enactment. The attorney general of Massachusetts is before us, insisting not only that this policy will be continued in Massachusetts, but that it should be applied everywhere. We must assume that the state of Massachusetts has declared in favor of the per-can rate as the settled policy of that state.

It is certainly desirable that the system of transportation prevailing from state and interstate points into the city of Boston should be uniform. It often happens that the same car could most economically transact partly state and partly interstate business, which does not seem to be possible under the present arrangement. It is further true that in no way can absolute equality in transportation conditions between state and interstate producers be obtained unless the same rates of transportation are applied. We should be glad therefore to bring the interstate into conformity with the state rates, if we felt that this could be done in justice to interstate shippers.

In theory, there is no discrimination against the producer of milk in Massachusetts at the present time. It is true that the expense of his transportation is greater, but it is greater because he elects to employ a system of transportation which is more expensive. He employs that system as a matter of policy, because, under it, wider competition and therefore a better price will be obtained by the producer. What the producer loses in transportation charges by employing the more expensive system he is supposed to gain in the price obtained. Up to the present time he has gained nothing in price, but, upon the contrary, has been compelled to sustain the burden of the increased cost of the transportation.

Our belief is that to extend the per-can system to all territory would produce exactly the result which has been produced in the state of Massachusetts. It would increase the actual cost of the service and that would properly increase the charge made by the railroad company. Under the per-can system these farmers would sell to these same operators, but the operators would pay a reduced price, since the cost of carrying their milk to market has been increased. It is not within our discretion to prohibit the defendant from maintaining the carload system, since that is not unlawful under the act to regulate commerce; nor should we compel the Boston & Maine Railroad to furnish these icing facilities, when, in our opinion, it is unreasonable to do so. But even if we were free to exercise the fullest discretion, we should hesitate to impose this burden upon the 70 per cent of the milk produced outside that state in deference to the 30 per cent which is produced within it.

In the past the per-can rate has probably been too high in comparison with the carload rate. It is claimed that to-day these rates stand in a proper relation, owing, partly, to an advance of about 25

per cent in the carload rate and, partly, to a material decrease in the per-can rate. If the relation of these rates is not properly adjusted now it should be. As we have said, the carload shipper is entitled to a better rate than he who can only present for shipment a less-than-carload, since the cost of the service is less, but that difference must not be greater than circumstances warrant.

Up to the present time the only method of transporting milk to the Boston market has been in the cars of the operators, since the Boston & Maine Railroad neither has operated nor been ready to operate refrigerator cars under any circumstances itself. It may therefore, with truth, be said that hitherto this system of transportation has given to these operators a virtual monopoly in the handling of milk. While it is probable that the milk supply of Boston will continue to be handled in the future, as to-day, by a comparatively few large concerns, we do not think that under our decision that can be fairly attributed to the system of transportation, except in so far as the carload rate always gives an advantage to the one who can make use of it over the less-than-carload shipper. It can hardly be said, when the Boston & Maine Railroad stands ready to furnish refrigeration facilities from any and all points upon its line, where a minimum of 600 cans from a given section is offered for shipment at the per-can rate, that a monopoly is created in favor of the carload shipper by the impossibility of obtaining transportation in smaller quantities.

Our conclusions are:

I. That the leased-car system is not, if the tariffs are properly framed, unlawful.

II. That a per-can rate bearing a proper relation to the carload rate should be established.

III. That where, as to the city of Boston, milk must be handled under refrigeration, icing facilities should be provided when shipments at the per-can rate are offered from a given section equaling 600 cans per day.

These conclusions have been reached after thorough investigation and painstaking consideration, and seem to necessarily follow from the application of the act which we administer to the facts now existing. Should conditions change in the future a different result might follow.

No affirmative order is required at this time, but inasmuch as complications may arise in the future touching the application of the principles laid down, the case will be reserved for further proceedings.

INVESTIGATION AND SUSPENSION DOCKETS Nos. 48, 48-A, 48-B, 48-C, 48-D, AND 48-E.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF FREIGHT IN SINGLE PACKAGES AND SMALL LOTS.

Submitted December 1, 1911. Decided February 5, 1912.

Proposed advance in the minimum charge on less-than-carload shipments in official classification territory from 25 cents to 35 cents not justified.

H. C. Barlow for Chicago Association of Commerce.

C. D. Chamberlin and *F. W. Boltz* for National Petroleum Association.

E. P. Bates for Pennsylvania Railroad.

Charles H. Blatchford for Boston & Maine Railroad; New York, New Haven & Hartford Railroad Company; and Maine Central Railroad Company.

Clyde Brown and *Ernest S. Ballard* for New York Central Lines.

Clyde Brown, *Hugh L. Bond, jr.*, *H. A. Taylor*, and *Charles H. Blatchford* for Delaware, Lackawanna & Western Railroad Company; Boston & Albany Railroad Company; Western Maryland Railway Company; Cleveland & Buffalo Transit Company; Wabash Railroad Company; Chicago, Terre Haute & Southeastern Railway Company; Elgin, Joliet & Eastern Railway Company; Chicago, Indianapolis & Louisville Railway Company; New York, Chicago & St. Louis Railroad Company; New York, Ontario & Western Railway Company; Bangor & Aroostook Railroad Company; Detroit, Toledo & Ironton Railway Company; Pennsylvania Railroad Company; Buffalo, Rochester & Pittsburgh Railway Company; Goodrich Transportation Company; Boyne City, Gaylord & Alpena Railroad Company; Western Transit Company; Lehigh & New England Railroad Company; and Philadelphia & Reading Railway Company.

R. Walton Moore and *E. L. Blanchard* for Oregon Short Line Railroad Company; Southern Pacific Company-Atlantic Steamship Lines; and Union Pacific Railroad Company.

R. Walton Moore and *E. L. Blanchard* for Alabama & Vicksburg Railway Company; Alabama Great Southern Railroad Company;

Atlanta & West Point Railroad Company; Atlantic Coast Line Railroad Company; Central of Georgia Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Carolina, Clinchfield & Ohio Railway; Carolina, Clinchfield & Ohio Railway of South Carolina; Georgia Railroad; Georgia Southern & Florida Railway Company; Gulf & Ship Island Railroad Company; Mobile & Ohio Railroad Company; Illinois Central Railroad Company; Nashville, Chattanooga & St. Louis Railway; New Orleans & Northeastern Railroad Company; Norfolk & Western Railway Company; Ocean Steamship Company of Savannah; Old Dominion Steamship Company; Richmond, Fredericksburg & Potomac Railroad Company; Seaboard Air Line Railway; Southern Railway Company; Tennessee Central Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Virginia & Southwestern Railway Company; Western & Atlantic Railroad; and Western Railway of Alabama.

Edward F. Murray for Hudson Navigation Company and Murray's Line.

H. A. Taylor for Erie Railroad Company; New York, Susquehanna & Western Railroad Company; Chicago & Erie Railroad Company; New Jersey & New York Railroad Company; and Bath & Hammondsport Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

To become effective July 1, 1911, carriers operating in official classification territory sought to increase (without other change in the rules) the minimum charge on single packages and small lots of freight from 25 cents to 35 cents. By orders of June 20 and September 21, 1911, the Commission suspended the advance until April 28, 1912. Docket No. 48 involves the increase filed by steam carriers, and the lettered dockets those filed by electric roads operating in official classification territory which are parties to or have adopted that classification. The rules providing for the increased minimum charge are 15 (B) and 15 (C) of the official classification, which are as follows:

Rule 15 (B). No single package or small lot of freight of one class will be taken at less than 100 pounds at first class rate; and in no case will the charge for a single consignment be less than 35 cents.

Rule 15 (C). A small lot of freight of different classes will be taken at actual weight and at the class rate for each article, provided that the aggregate charge for the shipment shall be not less than for 100 pounds at first class rate; and in no case shall the charge for the entire consignment be less than 35 cents.

Ever since the passage of the original act to regulate commerce and the birth of the official classification the minimum charge in

nearly all official classification territory has been 25 cents. A local regulation of the state of New Jersey is said to have brought about the establishment and maintenance of a minimum charge of 12 cents on single packages or small consignments of freight within that state. That charge was extended by exceptions to the classification to apply between certain points in Pennsylvania contiguous to the New Jersey-Pennsylvania state line and points in New Jersey.

From April 1, 1887, to January 1, 1908, the minimum charge between Philadelphia and New York City was 22 cents, the first class rate for 100 pounds.

Effective February 15, 1912, the western classification will for the first time contain a minimum-charge rule, as follows:

Unless otherwise provided, the minimum charge for a single shipment of less-than-carload freight will be 100 pounds at first class rate, but in no case less than 25 cents.

This, generally speaking, will effect some increase in the present rules now contained in the tariffs of the individual lines.

The southern classification provides a minimum charge on a single shipment of 25 cents.

Several state commissions have recently declined to permit an advance in the minimum charge of 25 cents on state shipments to become effective.

It is testified on behalf of the shippers that the advance would seriously affect jobbers who ship short distances.

In justification of the advance the respondent carriers introduced exhibits containing data relative to certain items entering into the cost of the service. From these data they find that those items of cost per shipment fluctuate within the following limits:

Station cost.....	15.458 to 23.700 cents.
Stationery.....	.379 to 1.100 cents.
Auditing.....	.880 to 4.700 cents.
Road haul.....	3.030 to 10.926 cents.

Using the total operating expenses of the New York Central & Hudson River Railroad Company for the year 1910 as a basis, the carriers find that the costs which they have sought to apportion cover only about 53 per cent of the total operating expenses. In their brief they say that somewhere between 20.447 and 40.426 cents—

lies the figure which represents the exact average cost to the carriers of each minimum shipment, so far as the items included are concerned. To that figure, whatever it be, must be added a proportion of the local transfer cost, a proportion of the interchange cost, a proportion of the unapportionable 47 per cent of operating expenses, and a proportion of the interest on the bonded debt and the dividend on the capital stock.

The carriers, therefore, argue that the present minimum charge of 25 cents does not pay that part of the carriers' costs properly attributable to minimum-charge shipments, and the carriers have a legal right to make a reasonable profit on each class of traffic carried.

The shippers urge that the advance should not be allowed for the following reasons: (1) Conditions have become settled and the advance would disturb them; (2) the present rate has been maintained unquestioned for a long period; (3) a minimum charge of 25 cents on intrastate and 35 cents on interstate shipments would result in undue discrimination against the latter; (4) the carriers have not proven that the cost of service is disproportionate to the revenue received; (5) no testimony was presented as to revenue received from single packages and small lots of freight, or the proper relation of rates; (6) on a per-ton-per-mile basis the proposed advance is unreasonable; (7) the recognized theory of division of costs of service on the revenue basis has been disregarded.

If the mean of the minimum and maximum averages of the apportioned items, added to the unallocated and unapportionable items of cost of service, are in excess of the minimum charge, that fact will go far toward sustaining the burden of proof which the statute casts upon the carriers. It will be necessary, therefore, to analyze some of the exhibits to determine whether or not they reflect conditions which are sufficiently important to materially influence or control our conclusions.

Station cost includes physical handling at stations, accounting, waybilling, notices of arrival, and station overhead expenses. The cost of physical handling was ascertained, either by timing the actual operations on the basis of the shipment, the package, or the truck load, and charging thereto the proper proportion of the wages of the men engaged, or by reducing all the less-than-carload freight handled to the basis either of 100 pounds or of the average weight of a minimum shipment and charging thereto the proper share of the wages of all the men engaged in the physical handling. The average weight of a minimum shipment is stated to range from 130.5 pounds on the Pennsylvania to 154.8 pounds on the Boston & Albany. The carriers suggest that the calculations are unfavorable to them because timing increases expedition; the shipments average more than 100 pounds, and waybilling and accounting are necessarily greater for a shipment containing more than one article than for a shipment consisting of but one.

In their brief the carriers present a compilation of the station cost at 18 stations on the New York Central, as follows:

Station.	Out-bound.	Inbound.	Total.
	Cents.	Cents.	Cents.
Barclay Street, N. Y.....	6.531	10.045	16.576
Fort Plain.....	6.259	7.552	13.811
Frankfort—W. S.....	7.961	15.241	23.202
Carroll Street, Buffalo.....	6.202	1.245	7.447
Ilion—W. S.....	6.555	9.153	15.708
Peekskill.....	5.952	9.148	15.100
Rochester.....	15.956	8.958	24.914
Brockport.....	8.913	14.831	23.744
Tarrytown.....	6.840	8.650	15.490
Seneca Falls.....	5.117	8.600	13.717
Herkimer.....	4.977	8.090	13.067
Medina.....	6.833	6.726	13.559
Lockport.....	6.114	8.498	14.612
Batavia.....	6.990	9.306	16.296
Gouverneur.....	5.047	7.289	12.336
Albany.....	7.454	9.713	17.167
Auburn.....	6.076	6.932	13.008
Syracuse.....	4.984	8.133	13.117
Average.....	6.376	9.406	15.782

The wide differences between these estimates for stations on one line, near to each other, and, so far as appears, where traffic and transportation conditions are substantially similar, is rather striking. It is explained, however, that, due to errors in transcribing, the item of outbound cost at Rochester is incorrectly shown as 15.956 cents instead of 5.956 cents, the inbound cost at Buffalo as 1.245 cents instead of 12.45 cents, and the inbound cost at Syracuse 8.133 cents instead of 18.133 cents.

These corrections would somewhat affect the totals and the averages. Allowing for these corrections, the total estimated cost ranges from 12.336 cents at Gouverneur to 23.744 cents at Brockport. The amount of freight handled through the freight houses at the stations included in the list ranges from 12 tons to 822 tons per day. But taking some of the stations which are among the more important, and making the corrections noted, we find that the total estimated costs range from 14.914 cents at Rochester through 16.576 cents at New York, 17.167 cents at Albany, and 18.652 cents at Buffalo to 23.117 cents at Syracuse; 55 per cent-plus higher at Syracuse than at Rochester.

The station cost estimated for several roads is as follows:

Roads.	Number of stations.	Total average station cost.
		Cents.
New York Central.....	18	15.782
Pennsylvania Lines west.....	15	18.34
Erie.....	Certain.	15.11
Cleveland, Cincinnati, Chicago & St. Louis.....	15	17.002
Boston & Maine.....	10	16.01
Boston & Albany.....	10	16.121
Baltimore & Ohio.....	17	16.806

Estimated approximate station costs of handling minimum shipments of merchandise freight from large to small stations are, per shipment, as follows:

	Cents.
Pennsylvania Railroad	23.70
New York Central.....	17.458
Cleveland, Cincinnati, Chicago & St. Louis.....	15.490
Boston & Albany.....	15.697
Baltimore & Ohio.....	16.04

Analysis of the statements filed of record shows that variations in estimated costs are due in some measure to the fact that different methods of arriving at the estimates were followed by different carriers, and to the inclusion by some carriers of items of expense that were excluded by others.

The averages furnished from some 160 stations show an average station cost of 16.44 cents. The averages of three roads for six large stations show an average station cost per shipment of 24.11 cents. These figures indicate that at large terminals the cost is greater than at small stations, and such was the testimony. Necessarily, where the great majority of stations as to which data have been furnished shows an average cost of 16.44 cents, that figure weighs more heavily than the average cost of 24.11 cents at but six stations.

The cost of waybilling, applicable only to outbound shipments, was ascertained by dividing the wages of men so employed during the time occupied by the number of shipments billed. The inquiry naturally arises, Why should it, for instance, cost the New York Central \$5.08 to waybill 153 shipments at Medina, N. Y., and only \$2.72 to waybill 155 shipments at Herkimer, N. Y.? or, Why does it cost the Pennsylvania Lines 3.969 cents to waybill a shipment and the Pere Marquette only 1.640 cents?

The expense of station accounting was ascertained separately with respect to outbound and inbound shipments. The outbound expense which accrues only on outbound prepaid shipments was apportioned among all the outbound shipments and the inbound expense among all inbound shipments. The cost of accounting on the New York Central at Frankfort on 10 prepaid outbound shipments was \$1.06, and on 17 inbound shipments was \$1.79; whereas it cost the Boston & Albany at Westboro, Mass., 48 cents on 9 outbound prepaid shipments.

The expense of notices of arrival was arrived at by dividing the total expense by the number of inbound shipments. In instances where notice had been given by telephone and the cost per telephone call could not be ascertained they were estimated at 1 cent each, as that would have been the cost of a postal-card notice. The cost ranges from nothing to 2.33 cents per shipment. But it costs the

Baltimore & Ohio an average of 4.1 cents per shipment at North Vernon, Ind., to prepare notice to consignee of arrival, freight bill and delivery receipt, and collection of and accounting for freight charges.

The cost per shipment of stationery used at stations was shown for only three roads:

	Cents.
Pere Marquette.....	. 879
Boston & Albany.....	. 770
Delaware, Lackawanna & Western.....	1. 100

Stationery, however, is also included in station cost, accounting, and auditing.

The cost of auditing a shipment is based on the assumption that the cost of auditing a minimum shipment is the same as the average cost of auditing all shipments. An examination of the exhibits discloses discrepancies, as to which we will simply refer to some instances. The total expense for auditing freight receipts on Pennsylvania Lines west in March, 1911, was \$38,189.55, which, divided by the total number of shipments, produces an average cost per shipment of 3.603 cents. The auditing cost on the Pennsylvania Railroad, based on the labor involved in checking rates and extensions on waybills only, was 1 cent per shipment. The figures are not exactly comparable, but if they could be used to measure performance at other stations the query naturally arises, Why should it cost nearly four times as much to audit a shipment west of Pittsburgh as east of Pittsburgh?

By widely differing methods three roads arrived at the expense of road haul. The average length of haul for minimum shipments is shown to be 54.49 miles on the Boston & Albany, 48.41 miles on the Pennsylvania Lines west, and 56 miles on the Pennsylvania Railroad.

Four trains were investigated; two on the New York Central, one on the Pennsylvania Lines west, and one on the Pennsylvania Railroad. On local freight train from Rochester to Suspension Bridge, N. Y., 75.6 miles, the estimated cost per ton per mile of hauling less-than-carload freight was 1.3715 cents; on local freight train from Poughkeepsie to Rensselaer, 68.87 miles, 3.0799 cents.

On the first train no carload freight was hauled; there were no empty cars in the train to be placed for loading, and there was 160,061 pounds of less-than-carload freight; the second train had 889,380 pounds of carload freight, three empty cars, and 41,608 pounds of less-than-carload freight. This would indicate that it costs one-half as much per ton per mile to haul a comparatively small quantity of less-than-carload freight alone, as it costs when nearly six times as much carload and less-than-carload freight and three empty cars are hauled. On the Pennsylvania Lines west the cost for exclusive pack-

age local service is shown as 10.926 cents per shipment, and on the Pennsylvania Railroad it is shown as 7 cents.

Although we have carefully examined all the statements filed and considered all of the deductions sought to be drawn therefrom, we will not undertake in this report to refer to them all in detail. We are dealing with an advance sought to be made effective on some 700 roads in a territory comprising 313,668 square miles in the most populous section of our country, where the tonnage carried is practically 50 per cent of the total tonnage of the United States. An increase by concerted action of the carriers of 40 per cent in the minimum charge which has been in effect in this territory for 25 years is an important matter which demands most careful consideration. The effect of the increase is not alone to advance the minimum charge, but to very largely increase the number of shipments subject thereto. That is, the present rule does not apply on any shipment on which the charge is in excess of 25 cents. If the advance be allowed any shipment on which the charge is less than 35 cents will be subject to the rule.

As to what proportion of the minimum charge shipments are state and what interstate we are not informed. Plainly, however, where jobbing centers are situated near state lines, the advance of the interstate charge and the retention of the present charge on state shipments will inevitably result in a discrimination against the former. This point is in no sense controlling. We refer to it in connection with the fact hereinbefore noted that some of the respondents have voluntarily extended to interstate points and long maintained a minimum charge applicable in one state which is less than one-half of the interstate minimum charge which they now seek to increase. Carriers may not haul a particular class of traffic or traffic for a particular community at less than the cost of the service and recoup themselves from the charges levied against other traffic.

The possible change in the present economic condition under which the small dealer has been able to distribute to the consumer in competition with his more prosperous rival, the suggestion that the carriers are more than willing to shift the carriage of small packages to other agencies, the absence of testimony in reference to revenue or the relation of rates, and all the other matters and things urged and argued by the shippers and referred to herein have been considered by the Commission. Do they outweigh the primal defense that the cost of service exceeds the present minimum charge? And have the carriers a legal right to a profit on minimum-charge shipments separate and distinct from other less-than-carload shipments?

We have referred to the variations and discrepancies in the figures presented by the carriers. The information on which these partial-

cost figures base was obtained not prior to the advance for the purpose of determining whether the service was performed at a loss, but almost uniformly immediately prior to the hearing in this proceeding, and presumably more in an effort to justify action already taken than to determine the necessity for the advance. They are for one day or one month at a comparatively few stations and show unexplained divergences. In *In re Investigation of Advances in Rates by Carriers in Western Trunk Line, Trans-Missouri and Illinois Freight Committee Territories*, 20 I. C. C. Rep., 307, the Commission, referring to the cost figures there produced, said—

In all such cost figures there are arbitraries of many kinds and varying importance. These must be criticized, checked, corrected, and compared through a number of years before they may be said to be in any sense reliable. But there is no scientific achievement without the drudgery of detail, long delay, and many tiresome comparisons, tests, and analyses.

One witness for the carriers testified that he could only surmise as to the variations in cost figures about auditing. Another stated that he had not verified the correctness of the figures, and that when they were obtained the minimum-charge shipment was not considered involved. But even if these figures had been corrected, checked, verified, and compared, does it follow as a logical and legitimate deduction from the premise that it may cost somewhere between these totals with the unapportioned items added, at only 165 stations, on a dozen out of 700 roads that at the stations in official classification territory as a whole, or generally, the carriers are performing this service without profit?

Are the shipments moving under the minimum charge “a particular class of traffic”? They cover all sorts and kinds of merchandise, carried under all of the class and commodity rates. Except where the regular charge under the tariff happens to be 25 cents, the charge on each of these shipments under the minimum-charge rule is greater than would accrue under the tariffs were it not for the rule. These shipments are a part of the less-than-carload traffic, which the carriers will not transport at a charge less than 25 cents per shipment.

From a review of the whole record we are of the opinion that the cost figures produced are not sufficiently reliable and so representative of conditions in official classification territory to overcome the presumption of the reasonableness and remunerative character of the present minimum charge. Nor do they sustain the burden of proof which the statute places upon the carriers. We are constrained to hold that the evidence is not sufficient to justify the advance.

It is expected that the carriers will promptly cancel the tariff provisions for the proposed advance. If this is not done an order will be entered directing the maintenance of the present charge as a maximum for the statutory period.

No hearing has been had and no finding is here made as to the allegation contained in paragraph 6 of the petition of the National Petroleum Association to the effect that carriers, parties to the official classification, unjustly discriminate in the classification of petroleum axle grease, lubricating grease, and petroleum grease, n. o. s., in less-than-carload quantities. Neither the rates on, nor the classification of, these commodities, was suspended by the Commission. Those questions therefore remain to be heard and determined in a separate proceeding.

22 I. C. C. Rep.

INVESTIGATION AND SUSPENSION DOCKET No. 54.
IN THE MATTER OF THE INVESTIGATION AND SUSPEN-
SION OF ADVANCES IN CLASS RATES BY CARRIERS.

Submitted October 16, 1911. Decided February 5, 1912.

Proposed increased class rates from St. Paul, Minneapolis, and Duluth to Buffalo, Pittsburgh, and other points in central freight association territory, not shown to be reasonable.

G. L. Hubbell for R. E. Cobb and the Northwestern Cream Shippers' Association.

Herman Mueller for Western Freight Traffic Association.

T. A. McGrath for Minneapolis Traffic Association.

W. F. Dickinson and *R. G. Brown* for Chicago, Rock Island & Pacific Railway Company.

W. H. Hosmer for Western Trunk Line Committee.

C. C. Wright for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

This proceeding involves the reasonableness of proposed increased class rates from St. Paul, Minneapolis, and Duluth, Minn., to Buffalo, Pittsburgh, and other points in central freight association territory. Supplement No. 9 to Hosmer's I. C. C. No. A-92, to have become effective August 1, 1911, withdrew joint class rates from and to the points in question, leaving in effect combinations which aggregated higher charges. By order of this Commission, entered July 26, 1911, this schedule was suspended until November 29, 1911, and an investigation by the Commission into the reasonableness of the increased rates instituted. November 29, 1911, the schedule was further suspended until May 29, 1912.

The commodities chiefly affected are butter and eggs, less than carloads. Official classification rates butter, n. o. s., less than carloads, in tin cans or pails, in cases or barrels, second class; in wood, second class; in glass, packed, or in earthenware crocks or jars, in cases or barrels, first class; eggs packed in barrels or in wooden egg cases or carriers, less than carloads, second class. The present joint class rates from St. Paul, Minneapolis, and Duluth to Buffalo, have

been in effect for a number of years. These rates are governed by official classification and are as follows:

Class....	1	2	3	4	5	6
Rate.....	95	79	60	42	36.5	29.5

Joint rates were first effective westbound and when the eastbound rates were published they were made the same as the westbound rates. The suspended schedule does not change the rates westbound but withdraws the eastbound joint rates leaving in effect the following combinations, western classification, which rates both butter and eggs second class, applying to Chicago:

To Chicago—

Class....	1	2	3	4	5
Rate....	60	50	40	25	20

Beyond—

Rate....	45	39	30	21	18
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Through—

Rate....	105	89	70	46	38
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Increase—

Rate....	10	10	10	4	1.5
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While all class rates are involved, it will be sufficient for the purposes of this report to consider as typical the second class rate from St. Paul to Buffalo.

The reason assigned by defendants for the advance in the rate to *Buffalo* is that the western carriers were being deprived of revenue on shipments to *New York* “on account of the fact that rates on butter and eggs were being manipulated by billing locally to Buffalo and reconsigning, thereby defeating the through published tariff rates on butter and eggs.” There is no joint rate from St. Paul to New York. The combination based on Chicago is \$1.15, constructed 50 cents to Chicago and 65 cents east. Of this rate the lines west of Chicago receive their full local of 50 cents. Based on Buffalo, the combination is \$1.12, made up of the 79-cent joint rate to Buffalo and 33 cents beyond. Based on Chicago, the combination rates to Buffalo aggregate 89 cents, the 10 cents shrinkage in the joint rate of 79 cents being absorbed by the western carriers. On shipments billed to Buffalo, the western lines receive only 40 cents, 10 cents less than their local rate to Chicago, allowing full local of 39 cents to the eastern roads. The allegation that shipments were consigned to Buffalo and from there rebilled to New York is not supported by the record and defendants were unable to cite a specific instance. If so handled, the western lines would receive only 40 cents—their proportion of the 79-cent joint rate to Buffalo—while the eastern roads would receive the remaining 39 cents and 33 cents from Buffalo to New York, a total of 72 cents, or 7 cents more than their Chicago-to-New York rate. It is contended that if the shipments were con-

signed through to New York, the western lines would receive their full local of 50 cents to Chicago and the eastern lines their rate of 65 cents. It was not explained how the shipper could be subjected to the payment of a rate of \$1.15 when there was in effect a combination based on Buffalo aggregating only \$1.12. It was stated, however, that if the \$1.12 rate were applied to a through shipment the eastern lines would receive 65 cents and the western lines the remainder, 47 cents, a so-called shrinkage of 3 cents in the revenue of the latter. It is practically admitted by the western lines that they are content with their division of the 79-cent joint rate on all business to Buffalo proper, but on business to New York they desire their full local to Chicago. Briefly stated, therefore, an advance in the rate to Buffalo is proposed not because the Buffalo rate is considered too low, but because on shipments ultimately going to New York City and rebilled at Buffalo the western carriers lose revenue to which they would be entitled were the shipments billed through. While the situation is peculiar and, from the standpoint of the western lines, may require remedy, we are not prepared to say that the joint rate to Buffalo, so long effective and practically admitted to be reasonable, should now be increased because of loss of revenue to one of the carriers not on traffic to that point but by reason of the interline division of such joint rate when used as a factor in constructing a combination to New York. The tonnage to Buffalo is shown to be heavy and the burden of the advance would be borne almost entirely by that traffic. So far as the shipper is concerned, the only difference in the rates to New York is the difference between the combination of \$1.15 based on Chicago and \$1.12 based on Buffalo, and it is difficult to understand why shippers should undertake to rebill at Buffalo when the \$1.12 combination could lawfully be obtained on through shipments. It was proposed by the shippers that the joint rate to Buffalo be advanced so as to make the rate to New York the same on both the Chicago and Buffalo combinations. This would mean an advance of three cents in the rate to Buffalo, making the same 82 cents. On basis of the divisions now in effect, this would give the western carriers 43 cents, and while it would reduce the alleged shrinkage in the revenue of those lines it would not cure the condition now said to exist. In our opinion the proposed increased rates are not shown to be reasonable. The question appears to be one of divisions and should be adjusted by the carriers themselves without disturbing the Buffalo rate. We shall therefore expect defendants to withdraw the supplement which proposes to cancel the aforesaid joint rates. If this is not done, the Commission will take such further action as will give effect to the views herein expressed.

INVESTIGATION AND SUSPENSION DOCKETS Nos. 52 AND 52-A.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF BITUMINOUS COAL.

No. 4415.

ELMORE-BENJAMIN COAL COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.

Submitted January 6, 1912. Decided February 5, 1912.

In December, 1910, by permission of the Illinois railroad and warehouse commission, the carriers engaged in transporting bituminous coal to Chicago from the fields in Williamson and Franklin counties, Illinois, increased their rate 7 cents per ton. At the same time a similar advance was permitted by the Interstate Commerce Commission in the rate to Chicago from the adjacent, or Harrisburg, field in Saline county, Illinois; the movement from this district being interstate. On June 22, 1911, this advance was applied to the joint rate to Milwaukee. Under this adjustment the rate from Williamson and Franklin counties continued to be 3 cents per ton higher than the rate from Saline county. Effective in July, 1911, defendants attempted to equalize these rates by increasing the latter 3 cents, but the proposed advance was suspended by order of this Commission. Complaints were filed attacking both the actual and proposed advances from the Harrisburg field to Chicago and points beyond, particularly to Milwaukee. After full hearing and investigation, *Held*; (a) That the advance of 7 cents per ton is not found to be unreasonable or unjustly discriminatory nor to subject the Harrisburg field, Milwaukee, or the traffic in question, to any undue or unreasonable preference or disadvantage. (b) That the defendants have sustained the burden of proving the propriety of the proposed advance of 3 cents per ton. Orders will be issued dismissing the complaint and vacating the orders of suspension.

M. F. Gallagher for shippers and complainant.

Robert J. Cary and *John F. Finerty, jr.*, for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

C. C. Wright for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

The matters involved in these cases are interrelated, they were heard together, and disposition of them will be made in one report. Investigation and Suspension Dockets Nos. 52 and 52-A concern an attempted advance of 3 cents per ton in the interstate rates on bituminous coal from the Harrisburg field in Saline county, in southern Illinois, to Chicago and to points beyond. These increased rates were proposed to be effective July 20 and 23 and November 16, 1911, in certain schedules filed by the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, which were suspended by orders of the Commission. The complaint of the Elmore-Benjamin Coal Company, a corporation with principal place of business at Milwaukee, Wis., attacks the reasonableness of an advance of 7 cents per ton, effective June 22, 1911, in the joint rate from said field to Milwaukee. Reparation is asked in this case in the amount of \$3.48.

These proceedings considered together question the reasonableness of a total advance of 10 cents per ton, 7 cents actual and 3 cents proposed, in the rates on bituminous coal from the Harrisburg field in southern Illinois to Chicago and to points beyond, particularly to Milwaukee. The route of movement to Chicago is via the Cleveland, Cincinnati, Chicago & St. Louis Railway from the Harrisburg field to Danville, Ill., and the Chicago, Indiana & Southern Railroad through a portion of the state of Indiana and thence back into Illinois to Chicago. From Chicago to Milwaukee the route is via the Chicago & North Western Railway.

Mining on a large scale in the Harrisburg field dates from the year 1905. Practically all the mines in that district are served by the Big Four Railroad, and since 1906 carriers affiliated with the New York Central system have maintained rates therefrom to Chicago proper, and since 1908, for beyond, which are at least 3 cents per ton lower than rates via other carriers serving mines in the coal measures in Williamson and Franklin counties immediately to the west of Saline county and geologically identical therewith. It appears from the testimony that the reason for this discrimination in favor of the Harrisburg district was the difference in the mining wage paid in the two districts. However this may be, it also appears that a large portion of the lump coal produced in the Harrisburg district is consumed by various carriers as company fuel, and that the major portion of the coal that seeks commercial markets at Chicago and Milwaukee is slack or screenings. The differential in favor of the Harrisburg district has never been acquiesced in by the coal operators in competitive districts and the advance suspended in Investigation and Suspension Dockets Nos. 52 and 52-A was initiated by the New York

Central lines for the purpose of removing this discrimination, the wage scale applicable to mining in the three counties having been equalized within the last two years.

The rates to Chicago from the various coal mines in Illinois and Indiana are adjusted with relation to one another, regard being had to distances, competitive conditions, and, in some cases, to the quality of the coal. In 1910, the railroad and warehouse commission of Illinois made an investigation of all intrastate rates on coal from the various Illinois districts to Chicago, the carriers interested in such rates having published advances ranging from 10 to 12 cents per ton, which they suspended at the request of that commission. Following such investigation, the commission decided that the carriers might advance their rate 7 cents from all points in Illinois, except from the southern Illinois territory where an advance of 8½ cents was authorized. The carriers, however, agreed that the advance should be uniform throughout the various fields and increased the southern Illinois rate 7 cents instead of 8½ cents. The rates from the Harrisburg district by way of the carriers here defendant, although interstate, were advanced at the same time and in the same measure as the rates from other Illinois fields. Protest was made to this Commission against the 7-cent advance from the Harrisburg district, as applied to the joint rate to Milwaukee, but the Commission declined to suspend and this advanced rate became effective as published.

The general rule of the carriers with respect to rates from the various coal fields to Chicago proper and for beyond is to make the proportional rate 10 cents less than the local rate. On November 30, 1910, the rates from Williamson and Franklin county mines to Chicago were 98 cents local and 88 cents proportional. The average distance from these mines to Chicago is about 315 miles and the local rate yielded an average rate per ton per mile of 3.2 mills, the proportional rate resulting in an average yield per ton per mile of 2.9 mills. At the same time the rates from the Harrisburg district in Saline country, approximately 320 miles from Chicago, were 95 cents local and 85 cents proportional. These rates yielded the carriers revenues of 2.9 mills per ton per mile on coal stopping at Chicago and 2.6 mills per ton per mile on coal going beyond that point. The advance of 7 cents per ton, effective in December, 1910, by permission of the Illinois commission, resulted in rates from the Williamson-Franklin county district of \$1.05 and 95 cents per ton on local and proportional business, respectively. The revenues received by the carriers under these rates were 3.4 mills per ton per mile and 3.1 mills per ton per mile. From the Harrisburg district via the lines of the defendants, the present rates to Chicago, local

and proportional, are \$1.02 and 92 cents per ton, resulting in ton-mile earnings of 3.2 mills and 2.8 mills. The suspended advance of 3 cents from this district would result in local and proportional rates of \$1.05 and 95 cents per ton which would yield the carriers ton-mile earnings of 3.3 and 2.9 mills, respectively. These rates and ton-mile earnings are compared on the same basis, covering the total haul, with no deduction for terminal charges or other expenses to the carriers. The through rate to Milwaukee is the proportional rate to Chicago, plus the local rate of the North Western line of 60 cents per ton, and joint through rates are published on this basis of division.

In this connection it should be stated that the increase of 10 cents in the rate to Chicago, the aforesaid advances of 7 and 3 cents, was not applied to the joint through rate to Milwaukee until June, 1911, and that from December 1 to 10, 1910, the rates from the Harrisburg district to Chicago were \$1.03 and 95 cents local and proportional, an advance of 10 cents that was corrected to 7 cents on the latter date. It appears, therefore, that for something over six months the joint through rate to Milwaukee was 7 cents a ton less than the sum of the proportional rate from Harrisburg to Chicago plus the local beyond, and for about 10 days the difference was 10 cents.

The testimony introduced by complainants in these cases was largely addressed to the commercial competition which coal from the Harrisburg district meets at Chicago and Milwaukee. At Milwaukee this competition is from what may be called Appalachian coal, which moves by rail from the mines to the lower lake ports and thence by vessel. The allegations of the complaint indicate that this coal is delivered at Milwaukee at a total rate very much lower than the former rate of \$1.45 from the Harrisburg district. It developed at the hearing, however, that the all-rail rate from Harrisburg to Milwaukee embraces services not included under the rail-and-lake combination from the Appalachian Mountains to Milwaukee, and that the total cost of getting a ton of coal from the Pittsburg or eastern districts to Milwaukee was not simply the sum of the rail rates from the eastern mines to the lower lake ports plus the lake rate to Milwaukee, whatever that might be, but involved the cost of unloading the vessel at the dock at Milwaukee, loading cars from the stores at the dock and switching from the dock to the required deliveries.

Coal from the Harrisburg field appears to be of fairly high grade as compared with Indiana-Illinois coal generally. Indeed it may be stated that it is on the whole of superior quality, but it can not be stored like eastern coal without deterioration and it does not rank as high in heat-producing power as coal from the eastern districts with which it competes.

However, it is obvious that many of these considerations detailed in the testimony can have only a slight and indirect influence in arriving at a judgment regarding the rates under attack. As before shown, the present and proposed rates from the Harrisburg district compare favorably with those from the Williamson and Franklin county district immediately to the west, and all of them yield revenues to the carriers which, on the ton-mile basis, can not be called excessive. Evidence introduced on behalf of the complainants described the competition of the various coal fields in the Chicago market. The object of much of this testimony appeared to be an effort to show the disadvantages suffered by the producers of coal in the Harrisburg field because of lower rates from other fields nearer to Chicago. Without examining the rates from all the various fields in Illinois and Indiana it may be stated generally that the suspended rates from the Harrisburg field are relatively lower than the rates from many of the competing fields. The Duquoin field which is somewhat west and north of the Franklin and Williamson county field and 288 miles from Chicago has a rate of 97 cents to that city. This rate as applied to the mine furnishing the great body of the movement yields the Illinois Central Railroad a revenue per ton per mile of 3.36 mills; and the average rate from De Soto, Duquoin, and Pinkneyville is 3.27 mills. Viewing the coal fields in Saline, Williamson, and Franklin counties as a unit in their relation to the Chicago market, or Chicago as a distributing center, the suspended advance of 3 cents, from \$1.02 to \$1.05, from Harrisburg and other Saline county mines, would place the latter on a footing of equality with mines in the other two counties so far as the freight rate is concerned. Our attention has not been called to any valid consideration, and we know of no considerations which would entitle Saline county to more favorable rates to Chicago and Milwaukee than Williamson and Franklin counties. Nor can we justly condemn the proposed rate as unreasonable of itself. This applies to the joint rate from Harrisburg to Milwaukee as well as the rate to Chicago so far as the former is determined by the latter, but we express no opinion with reference to the rate of 60 cents from Chicago to Milwaukee, either as a local rate or, as in this case, a part of a joint through rate. The relation of that rate to many other rates, as a basing rate, is such that we can not pass upon it in a collateral proceeding of this character.

The evidence shows that while theoretically the rate of \$1.05 will apply to all grades of bituminous coal, just as the rate of \$1.02 now applies, as a practical matter this rate applies chiefly to the lowest grades of coal—slack and screenings—which constitute about 95 per cent of the shipments from Harrisburg to Chicago.

Upon consideration of all the circumstances and conditions involved in these cases, we are of the opinion that the defendants have sustained the burden of proving the propriety of the proposed advance of 3 cents per ton, and that the increase of 7 cents per ton now in effect is not unreasonable or unjustly discriminatory, nor does it subject the Harrisburg field, Milwaukee, or the traffic in question to any undue or unreasonable prejudice or disadvantage. Orders will be issued vacating the orders of suspension entered in these proceedings and dismissing the complaint of the Elmore-Benjamin Coal Company.

No. 3911.

LAMB, MCGREGOR & COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted May 24, 1911. Decided February 5, 1912.

1. A mixed carload shipment of wheat and flaxseed from Esmond, S. Dak., to Minneapolis, Minn., found to have been overcharged.
2. The law contemplates that an award of reparation shall be made to the person actually damaged. The complainant in this case having suffered no injury and having no legal interest in the amount of overcharge, the Commission can make no award of reparation. Complaint dismissed.

T. A. McGrath for complainant.

A. M. Fenton for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the grain commission business at Minneapolis, Minn. Its petition, filed March 7, 1911, alleges that it has been subjected by defendants to the exaction of unjust and unreasonable rates for the transportation of a mixed carload of wheat and flaxseed from Esmond, S. Dak., to Minneapolis. Reparation is asked.

On July 18, 1910, one A. N. Barber shipped from Esmond to Minneapolis via the Chicago & North Western and Chicago, St. Paul, Minneapolis & Omaha Railways a mixed carload shipment consisting of 60,000 pounds of wheat and 7,430 pounds of flaxseed, both commodities being loaded in the same car and separated by a bulkhead of boards.

The shipment was consigned to complainant, who paid charges thereon in the total sum of \$127.50, based on a rate of 13½ cents upon 60,000 pounds of wheat, and a rate of 15½ cents on a minimum of 30,000 pounds of flaxseed. These charges were paid to defendants by the complainant, who recharged the full amount thereof to the said Barber in settlement of account with him.

At the time the shipments moved the rate on wheat in carloads from Esmond to Minneapolis was 13½ cents. The rate on flaxseed in carloads, minimum 30,000 pounds, was 15½ cents. The less-than-carload rate on flaxseed was 37 cents. The tariff naming the rates stated was subject to regulations published in western trunk line tariff, I. C. C. No. A-122, which contained the following rule:

Grain, mixed c. l., or grain and seeds, mixed c. l. On shipments of mixed carloads of grain, mixed carloads of grain and seeds, except garden seed, and of mixed carloads of seeds, except garden seed, from one consignor to one consignee, provided that all or all but one of the different kinds of grain or seed are sacked, except that on mixed carloads of grain, viz, corn, oats, wheat, rye, or barley, bulkheads may be used to separate the grain, provided shipments are made at owner's risk of mixing, and the partitions are provided by or at the expense of the shippers. Highest carload rate and minimum weight applicable on the grain or seed contained in the car will be charged on the entire c. l.

Under their construction of this rule the defendants assessed the charges as stated above. The rule did not permit the bulkheading of wheat and flaxseed unless one or the other was sacked, the object of such separation being to prevent the mixing of the grains while in transit. We do not find, however, any authority for the exaction of rates on the flaxseed on basis of a carload minimum. The rule did not permit the shipment of the two commodities in bulk in the same car, but having been so loaded by the consignor and having been accepted by the carrier's agent and hauled from Esmond to Minneapolis, the duty of the defendants was to charge therefor in accordance with their published tariffs.

Upon the record we are of the opinion and find that the shipment was overcharged to the extent that charges assessed on the flaxseed at the carload rate and minimum rate exceeded the charges that would have accrued had the less-than-carload rate of 37 cents been applied on the actual weight of 7,430 pounds. Upon this basis the overcharge amounts to \$19.01.

The complaint asks reparation and the prayer is that the Commission require the defendants to make reparation to the complainant. This we can not do. It clearly appears by complainant's testimony at the hearing that it had no legal interest in any award that might be made; that its only authority for filing the petition was a protest made to it by Barber respecting the freight charges on the shipment. The law contemplates that an award of reparation shall be made to the party actually injured. So far as the record indicates, Barber, the consignor, was the injured party in this transaction. As he is not a party to the complaint, we can make no order of reparation upon the record as presented. The defendants should, however, ascertain the party rightly entitled to the overcharge found and refund the same to him without an order from the Commission.

The rule in the western trunk line tariff referred to above, as republished in subsequent issues, has been amended so as to permit the bulkheading of wheat and flaxseed, and specifies that a charge of \$5 above the rate shall be made therefor. No question is made of the reasonableness of the rates involved, and therefore no order for the future will be made.

The complaint must be dismissed, and an order will be entered accordingly.

22 I. C. C. Rep.

No. 3919.

McLEAN LUMBER COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted July 5, 1911. Decided February 5, 1912.

1. The fact that a certain rate is in effect via the lines of one carrier is not of itself proof of unreasonableness of a higher rate via a competing line.
2. Where a shipper's bill of lading contains instructions both as to route and rate, and the rate is not applicable over any route of the receiving carrier, but is applicable over the route of a rival line to which shipper might have delivered the shipment had he so elected, the receiving carrier may forward the shipment over its own line at the rate lawfully applicable, it not being obligated to turn the traffic over to its competitor.
3. Joint rates on hardwood lumber from North Birmingham, Ala., to Philadelphia, Pa., and New Brunswick, N. J., found unreasonable so far as they exceed by more than 2 cents per 100 pounds the rates contemporaneously in effect on yellow-pine lumber between the same points.

Arthur B. Hayes for complainant.

N. W. Proctor for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged at Chattanooga, Tenn., in the lumber trade. By petition, filed March 7, 1911, it alleges that rates charged by defendants for the transportation of two carloads of hardwood lumber from North Birmingham, Ala., to Philadelphia, Pa., and New Brunswick, N. J., were unreasonable and unduly prejudicial so far as they exceeded the rates contemporaneously in effect on yellow-pine lumber. Reparation is asked.

On August 5, 1909, the complainant delivered to the Louisville & Nashville Railroad at North Birmingham one car of oak lumber accompanied by shipping orders reading as follows:

Consigned to F. R. Gerry Co., Gerry's switch. Destination: Philadelphia, state of Penna. Route: Star Union Line, Phila. & Reading, Penna.

In the space on the form for entering the rate was written "29¢." The shipment weighed 76,200 pounds, and moved via the Louisville & Nashville Railroad to Cincinnati, Ohio., thence via the Pittsburgh, Cincinnati, Chicago & St. Louis Railway; Pennsylvania Railroad;

and Philadelphia & Reading Railway to Philadelphia. The latter carrier, which was not represented at the hearing, filed an answer to the complaint in which it says that it received the car at Harrisburg, Pa.; and, having no information as to the location of Gerry's switch, forwarded it to its general delivery station at Willow and Noble streets, in Philadelphia; that the charges to its station in Philadelphia were \$281.94; that after arrival of the car it learned that the car was intended for the Frederick R. Gerry Company, a firm having a siding on the Baltimore & Ohio Railroad in Philadelphia; that this firm requested delivery on said siding, and that the car was moved there at an additional charge of \$9.58 for Philadelphia & Reading switching and \$30.48 for the Baltimore & Ohio movement, which, together with charges of \$281.94 to Philadelphia, aggregated a total of \$321.95 on the shipment, which amount the record shows was collected by the Philadelphia & Reading Railway from the consignee.

The other shipment, consisting of a carload of poplar lumber, was delivered by complainant to the Louisville & Nashville at North Birmingham on July 30, 1909, consigned to New Brunswick. The shipping directions given by complainant specifically routed this car "Star Union line and Penna. Ry." In the space on the form for the rate was inserted "31 cents." The car moved via the Louisville & Nashville to Cincinnati, thence via Pittsburgh, Cincinnati, Chicago & St. Louis and Pennsylvania railroads to destination. Charges in the sum of \$227.76, based on a rate of 39 cents applied to the weight of 58,400 pounds, were collected from the consignee.

Complainant's vice-president has filed in the record an affidavit that complainant paid the freight charges to the consignee and therefore is the party entitled to any award of reparation which may be made.

At the time these shipments moved, both the Louisville & Nashville Railroad and the Southern Railway and its connections published from North Birmingham joint commodity rates of 29 cents on yellow-pine lumber to Philadelphia and 31 cents to New Brunswick. Under the Southern's tariff these rates were applicable on hardwood lumber, but the Louisville & Nashville's tariff did not include the hardwoods. Consequently the lawful rate which should have been applied was the joint sixth class rate of 54 cents. Contemporaneously, however, the Louisville & Nashville had a rate of 20 cents on hardwood lumber to Cincinnati, while the northern carriers had from Cincinnati rates of 17 cents to Philadelphia and 19 cents to New Brunswick, applicable on hardwoods. The aggregate of such intermediate rates, 37 cents and 39 cents, were assessed on the shipments to Philadelphia and New Brunswick, respectively.

The complainant's contention that charges should have been assessed on a rate of 29 cents to Philadelphia and 31 cents to New Brunswick is based on two propositions: First, that the Louisville & Nashville Railroad should, like the Southern Railway, make as low a rate on hardwood lumber as on yellow pine, and that its failure to do so was, and is, discriminatory. Second, that the shipments were made over the lines of defendant railways because the agent of initial carrier quoted rates of 29 and 31 cents, respectively.

The defendant Louisville & Nashville Railroad replied to the first of these propositions by saying that the legal rate applicable on both of the shipments was 54 cents, and that its agent erroneously billed the shipments to Cincinnati at the local rate of 20 cents, applicable on hardwood lumber. It denies that it is in any manner obligated to apply via its line as low a rate as that via competing lines, and denies that its failure to do so is in any way prejudicial. It admits, however, that there was a lower combination of intermediate commodity rates, and expresses its willingness to establish joint rates equal to the sum of such intermediate rates. This defendant further says that the rates from southern mill points to northern points on yellow-pine lumber are fixed by the lines running in an easterly and westerly direction; that in order to compete for this traffic it has been compelled to equalize, so far as possible, via the Ohio River gateways, the rates of its competitors, and in so doing has been compelled to accept very low and unsatisfactory proportions solely because of competitive conditions; that the preponderance of timber in Alabama, Georgia, and Florida is yellow pine, only a small portion being hardwoods; that the movement of the latter is small, creating no such competitive conditions as are forced upon it by the low rates on yellow pine. In short, it declines to meet the low rate applied by its competitors on hardwood lumber.

As to the second proposition, the defendant admits that its agent should not have accepted the bills of lading with the aforementioned rates inserted therein. It denies, however, that it made the quotations as alleged by complainant.

The Commission has ruled that where a shipper, having written specific routing instructions in the bill of lading, also inserts a rate which he expects to have applied, and the rate so entered in the bill of lading does not apply via the route specified, but is lawfully applicable via another route, it is the duty of the carrier to send the shipment via the route over which such rate applies unless a lower rate is applicable via the route specified by shipper. *Conference Rulings Bulletin No. 5*, rule 214 (i). At the hearing the complainant sought to invoke the application of this rule to the circumstances of this case. This rule has reference to a situation in which the

initial carrier has a discretion or control in the matter of routing; that is, to a situation where it is possible for it to forward the shipment over a route via which the rate entered in the bill of lading is lawfully applicable though not applicable over the route specifically indicated by the shipper. The rule does not contemplate that the initial carrier to whom a shipment has been delivered shall be required to ascertain if a competing line can carry the shipment at a less rate, and in that event turn it over to such line. The route over which the shipments in this case might have been forwarded was a direct one from North Birmingham and complainant might have availed itself of the lower rate by delivering the shipments to the proper carrier at point of origin. Having delivered them to the Louisville & Nashville the latter road was under no obligation to deliver them to its competitor, and consequently is not chargeable with misrouting as contemplated in the Commission's rule. No evidence was introduced by complainant in support of its allegation that the Louisville & Nashville quoted the lower rates as being applicable via its line, nor would it have been material, since the lawfully established rate is the rate that must be applied notwithstanding the erroneous quotation of other rates. *Poor Grain Co. v. C., B. & Q. R. R. Co.*, 12 I. C. C. Rep., 418.

It is true that the defendants did not meet through the Cincinnati gateway the lower rates applicable via the Southern Railway and its connections, and that the joint through class rate of 54 cents was the only rate lawfully applicable. The Louisville & Nashville admits the evident fact that the class rate was unreasonable to the extent it exceeded the sum of the intermediate commodity rates, but there is still another aspect to be considered in the establishment of joint rates. The local rates of the carriers north of Cincinnati of 17 cents to Philadelphia and 19 cents to New Brunswick are applicable on both hardwoods and yellow pine without distinction as to the kind of wood. The Louisville & Nashville's rate to Cincinnati is 20 cents on hardwoods and 18 cents on yellow pine. It is, of course, not required that rates shall be the same over all lines between the same points, and a lower rate via the lines of one carrier is not of itself proof of the unreasonableness of a higher rate via a competing line; but in this case the establishment of joint rates on hardwoods via Cincinnati equal to the intermediate rates, as proposed by the Louisville & Nashville, would have the result of establishing joint rates on hardwoods which would be 8 cents higher than on yellow pine. Since the carriers north of Cincinnati make no distinction in the rates on the different woods, and since the defendant carrier south makes a difference of only 2 cents in its local rate to Cincinnati, it appears that the carriers can not consistently with their own showing

make the joint rate on hardwood higher by more than the difference in the locals south of Cincinnati, which is 2 cents per 100 pounds.

Upon consideration of the facts it is the finding and conclusion of the Commission that reasonable joint rates for the transportation of hardwood lumber from North Birmingham, Ala., through Cincinnati to Philadelphia, Pa., and New Brunswick, N. J., should not exceed 31 cents and 33 cents, respectively. The terminal switching charges on the car to Philadelphia were properly assessed in accordance with the tariff provisions, and no question is made of their reasonableness. Had complainant properly routed the shipment they would not have been incurred.

We further find that complainant made the shipments in accordance with the above statement of facts and paid charges thereon at the rates found herein to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the rates above found reasonable been applied; that complainant is therefore entitled to reparation in the sum of \$45.72 on the car to Philadelphia and \$35.04 on the car to New Brunswick, with interest from September 7, 1909. The carriers will be required to establish and maintain for a period of two years rates on hardwood lumber from North Birmingham, Ala., through Cincinnati to Philadelphia, Pa., and New Brunswick, N. J., which shall not exceed by more than 2 cents the rates contemporaneously in effect on yellow pine. An order will be entered in accordance with these conclusions.

22 I. C. C. Rep.

No. 3567.

RALSTON TOWNSITE COMPANY ET AL.

v.

MISSOURI PACIFIC RAILWAY COMPANY.

Submitted November 4, 1911. Decided February 5, 1912.

Upon an application to the Commission to require defendant to construct, maintain, and operate a sidetrack and switch connection between defendant's railroad and a sidetrack leading to complainants' industries, based upon an alleged contract; *Held*, That the Commission has no power to enforce the specific performance of an agreement of this nature; nor to make an order compelling the defendant to construct and operate a private sidetrack.

Byron G. Burbank and James H. Adams for complainants.

James C. Jeffery, H. J. Campbell, and Henry G. Herbel for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The Ralston Townsite Company, a corporation, began the development of Ralston, Nebr., as an industrial center, and in the progress of this undertaking succeeded in locating upon its property certain manufacturing enterprises, including the Howard Stove Works, Rogers Motor Car Company, Ralston Car Works, Ralston Lumber Company, and the Brown Truck Company. These several corporations united with the principal complainant, the Ralston Townsite Company, in this petition. Ralston is about 11 miles southwest of Omaha, via the line of the defendant.

In furtherance of its plan, the principal complainant entered into a contract in writing with the Chicago, Burlington & Quincy Railroad Company, the feature of which, so far as this case is concerned, is the agreement on the part of the principal complainant to grade and prepare a roadbed upon which the said railroad company covenanted to lay and construct a sidetrack, furnish all the material necessary therefor, connect said sidetrack with its main line, and operate and maintain the same. Negotiations were had with the defendant, the Missouri Pacific Railway Company, with the view of effecting a similar agreement; but the result of such negotiations was unsuccessful to the extent that no specific contract in writing was executed.

The complainants allege that said negotiations constituted a verbal agreement on the part of the defendant, and they ask for an order of the Commission requiring the defendant to furnish material and lay a sidetrack about 2,700 feet in length upon the grade constructed and prepared by the principal complainant from defendant's line to the sidetrack above mentioned, which was built jointly by the Chicago, Burlington & Quincy Railroad Company and the principal complainant, to make a switch connection therewith, and to maintain and operate said sidetrack and switch connection when fully constructed.

A considerable amount of testimony was heard relative to the terms of the proposed agreement, the establishment of the industries adjacent to the sidetrack, and the amount of money invested in industries alleged to have been attracted to this locality upon the faith and representation that the defendant would connect its railroad with the said sidetrack and thereby afford the industries increased facilities for transporting their supplies and products in interstate commerce. Complainants predicate their right to relief upon the provisions of section 1 of the act to regulate commerce, which authorizes the Commission, upon complaint of a shipper or owner of a lateral or branch line of railroad, to investigate, and if the facts warrant, to make an order requiring the carrier to install and operate a switch connection.

Defendant denies that it made any agreement, oral or written, to construct, operate, and maintain a sidetrack or switch connection as averred in complainants' petition; and, further, it asserts that the Commission is not vested with authority to order defendant or any carrier to construct and operate a sidetrack over privately owned land.

Complainants' contention rests upon a contractual relationship alleged to exist between the principal complainant and the defendant. The essence of this complaint is that defendant agreed to construct and operate a sidetrack serving the plants and industries of some of the complainants; that defendant has failed to fulfill its promises and representations, and has thereby subjected the complainants to great and serious injury, inconvenience, and loss. The petition, therefore, in substance and effect prays for the specific performance of a verbal agreement, which agreement is wholly denied by the defendant.

The power of the Commission under the first section of the act to require a switch connection is not founded upon any contractual relationship existing between carriers and those entitled to invoke the benefit of the statute, and the Commission is without jurisdiction to compel the defendant to specifically perform a contract in respect thereto or to award damages for the breach thereof. Therefore it is

unnecessary to consider whether the negotiations of the parties constituted an enforceable agreement, or to inquire into the rights and remedies incident thereto. Whether or not complainants are entitled to an order under this provision of the act depends upon the existence of a state of facts which brings them within the terms of the statute and not upon an agreement entered into by the parties. The statute sets out in explicit terms the circumstances and conditions under which the Commission is empowered to make an order, and the evidence adduced must disclose a state of facts that brings the case within the purview of this enactment.

Congress intended to provide a method whereby a lateral branch line of railroad, or a shipper tendering interstate traffic for transportation originating upon a private sidetrack, may compel a carrier to install and operate a switch connection with said lateral railroad or private sidetrack when the same has been constructed in such manner that a connection is practicable and can be made with safety, and is justified from a business standpoint. While it is the function of the Commission, upon complaint, to investigate and determine all questions as to the safety, practicability, justification, and compensation involved in the construction, maintenance, and operation of such switch connection, it is a condition precedent to the exertion of the power of the Commission that such lateral railroad or private sidetrack should be actually constructed in such manner that a physical connection is practicable and safe. There is no averment or claim that the sidetrack desired by complainants has been constructed and prepared for a physical connection with defendant's railroad, and the fact is complainants have no sidetrack or lateral railroad with which the defendant could make a switch connection if ordered by the Commission so to do. The testimony shows that the principal complainant has constructed the grade for the said sidetrack, but that nothing further has been accomplished toward preparing it for a switch connection with defendant's railroad, because the complainants contend that the obligation and duty rests upon the defendant to complete the sidetrack and install and operate the switch connection.

The testimony further shows that the principal complainant has expended large sums of money in grading a bed for said sidetrack in the hope and expectation that the defendant would complete it and put it into operation in connection with its main line, but it is clear that the remedy for any alleged injury suffered in consequence of the failure of the defendant to perform its agreements is in the courts, and not by an order of the Commission. Complainants seemingly have failed to distinguish between the physical characteristics of a switch connection, which the Commission can require in a proper

case under the authority conferred by the first section, and a private sidetrack, which the Commission can not require a carrier to construct. As stated in *Winters Metallic Paint Co. v. C., M. & St. P. Ry. Co.*, 16 I. C. C. Rep., 587:

By section 1 of the amended act to regulate commerce the Commission is authorized to order the construction and maintenance, upon reasonable terms, of "a switch connection" with any lateral branch line of railroad, or "private sidetrack which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same." From the language of this section it is clear that the Commission has no authority to order the construction of a *private sidetrack* by a railroad company, but that its authority is limited to ordering a carrier to make "a switch connection" with a private sidetrack.

A very different situation would be presented in this case if the sidetrack were already constructed and complainants were demanding a switch connection between said sidetrack and defendant's line of railroad.

Upon consideration of the facts of record, it is the opinion of the Commission that no order such as prayed for by complainants can be predicated upon the facts appearing of record, and the petition must therefore be dismissed.

No. 2966.
BROOKLYN COOPERAGE COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL

Submitted February 20, 1911. Decided February 5, 1912.

The collection of demurrage charges upon complainant's shipments not found to have been unreasonable. Complaint dismissed.

Joseph W. Carroll for complainant.

R. Walton Moore for Illinois Central Railroad Company and New Orleans & Northeastern Railroad Company.

Hunter C. Leake for Yazoo & Mississippi Valley Railroad Company.

E. C. D. Marshall for Louisiana Railway & Navigation Company.

Page Harris for Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of barrels and shooks at New Orleans, La. By petition, filed November 15, 1909, it alleges that certain demurrage charges collected by defendants were unjust and unreasonable. Reparation is asked.

Complainant's plant in New Orleans is reached by a siding connected with the tracks of the Illinois Central Railroad. This siding has a capacity of 8 cars and is used exclusively by complainant, and all lines entering New Orleans have standing orders to deliver complainant's shipments to the Illinois Central. For handling such cars from its connections the Illinois Central receives a switching charge of \$2 per car, against which no complaint is made.

Between December 10, 1907, and February 7, 1908, a great number of cars arrived in New Orleans consigned to complainant, upon 345 of which demurrage charges in the sum of \$607 were collected. These cars were shipped from about 40 points of origin and reached New Orleans over several different lines. From all the evidence there does not appear to have been any "bunching in transit," as that phrase is commonly understood. It seems that all of the delivering carriers were ready to make deliveries to the Illinois Cen-

tral as soon as that carrier would receive the shipments, but due to the number of cars arriving and the limited capacity of complainant's siding, the Illinois Central, several times during the period in question, found that the cars were becoming congested in its yards and were considerably in excess of complainant's ability to unload. To prevent this it was its custom to issue an embargo against cars consigned to complainant. In all, notices of four such embargoes were issued. Of the duration of these several embargoes we are not advised, and none of the defendant's witnesses could enlighten us. It is of record, however, that the embargoes were of temporary duration and that as soon as the congestion was relieved the embargo was, in each such instance, raised by telephonic notice to the delivering carriers, and more cars were then received from them.

All of the demurrage accrued while the cars were being held by delivering lines awaiting acceptance by the Illinois Central, and the charges were apportioned as follows: Texas & Pacific, \$556; Louisiana Railway & Navigation Company, \$6; Louisville & Nashville, \$17; and New Orleans & Northeastern, \$28.

The petition specifically states that the delay "was entirely due to the failure from time to time of the Illinois Central Railroad Company to place the cars for unloading in reasonable proportion to the capacity of complainant's switch." This averment was reiterated at the hearing, and from the facts disclosed we are of opinion that none of the other delivering lines was at fault. The remaining question is whether or not the Illinois Central was negligent in the performance of any duty imposed upon it by the act to regulate commerce; and if so, to what extent complainant was thereby damaged. It appears from the record that with the exception of three or four days the Illinois Central kept complainant's siding filled to its capacity. On the excepted dates less than eight cars were on the siding, but it appears that all of these were not unloaded on the day placed. That the arrival of so great a number of cars was unusual is shown by the fact that during the corresponding period of the preceding year only 148 cars were received by complainant and only 245 cars the following year. From the record we are unable to find that the congestion was attributable to any cause other than that the complainant's business was apparently heavy during the period in question, and consequently an unusually large number of cars was received. To these special circumstances, rather than to any default on the part of the Illinois Central, the accrual of the demurrage charges appears to be due.

Under all the circumstances we are unable to find that the demurrage charges in question were unjust or unreasonable, and the complaint must be dismissed.

No. 3903.

PLANO MILLING COMPANY

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL

Submitted September 15, 1911. Decided February 5, 1912.

The principal defendant permits milling in transit at Plano, Tex., under through rates on grain from St. Louis, Mo., and Cairo, Ill., only on traffic destined to local stations on its line. Complainant asks for the transit privilege on such traffic on grain moving to destinations on the International & Great Northern Railway of Texas; *Held*, That the record fails to show that complainant is subjected to unjust discrimination or undue disadvantage. Complaint dismissed.

M. L. Kauffman and L. T. Pellerin for complainant.

S. H. West and Roy F. Britton for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

S. G. Reed for Houston & Texas Central Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a miller of corn and wheat at Plano, Tex., a station on the main line of the defendant St. Louis Southwestern Railway Company of Texas, hereinafter referred to as the Cotton Belt, between Texarkana, Ark., and Fort Worth, Tex. Plano is also on the main line of the Houston & Texas Central, about 20 miles north of Dallas, Tex. The complainant draws grain in large quantities from St. Louis, Mo., Cairo, Ill., and other northern points. The markets to which it desires to ship its products, so far as this complaint is concerned, are stations on the line of the International & Great Northern in the state of Texas.

The complaint arose out of the fact that the grain-carrying roads entering Fort Worth, including the Cotton Belt, permitted transit privileges on grain at that point under their through rates from St. Louis, Cairo, and Thebes to destinations on the International & Great Northern. The privilege is still open at Fort Worth, but not in connection with the Cotton Belt. The complainant, on the other hand, was and is accorded by the Cotton Belt transit privileges on

grain from those gateways only when the product moves to destinations on the line of that railway; such privileges being denied by the Cotton Belt when the product moves from Plano to points on the International & Great Northern. The petition therefore charges a discrimination in favor of the competing mills at Fort Worth, in violation of the third section of the act. The prayer is that the defendants be required to grant "the same privilege to shippers at Plano as is now granted shippers at Fort Worth."

The complainant is enabled to reach points in Texas on the Southern Pacific and certain connecting lines with grain originating in the north and brought into Plano by the Houston & Texas Central. While that company is named as a party defendant, no order against it is sought and therefore it is not really in the case.

The filing of the complaint was promptly followed by the withdrawal of the transit privilege at Fort Worth by the Cotton Belt. The answer of that company recites such cancellation as ground for the dismissal of the action. But the complainant asserts that its position is not bettered in any respect and that there is still a discrimination against Plano in favor of Waco, Tex., where a transit privilege was and is granted by the Cotton Belt on traffic originating at Kansas City and moving to points on the San Antonio & Aransas Pass Railway. But no amendment of the complaint was made, and the case was tried upon pleadings that fail to make any allegation respecting the privilege allowed at Waco.

On behalf of the complainant it is contended that the mill at Plano is the only one in that part of Texas which is unable to reach consuming points on the International & Great Northern under through rates from St. Louis, Cairo, and Thebes; that it needs the transit privilege in order to reach such consuming points on a parity with its competitors located on other lines of railway; and that there are no grounds which justify the denial of the privilege by the Cotton Belt. It is admitted that if established at Plano the privilege would have to be extended to all other points on the Cotton Belt in order to avoid a charge of unjust discrimination by other mills. But the complainant argues that the voluntary establishment by the principal defendant of the transit privilege at Fort Worth is evidence of the sufficiency of the revenue under the present through rates at Fort Worth and Waco.

On behalf of the principal defendant testimony was offered to the effect that for several years its policy with respect to milling in transit has been a conservative one, because the practice is hard to police and is susceptible of manipulation. The privilege was established by the Cotton Belt at Fort Worth only at the urgent request of shippers there and on the representation that there were something

like 1,200 cars of grain at Cairo ready to move through Fort Worth. But the traffic did not materialize. It is further claimed that the withdrawal of the privilege by the Cotton Belt works no injury to Fort Worth, and that the same is true of Waco, where the privilege will be withdrawn as soon as tariffs can be reissued. The transit privilege at Waco does not apply to points which this complainant desires to reach.

Milling in transit is a privilege which is frequently accorded by carriers under their through rates on grain from points of origin to the ultimate destinations. But shippers are not entitled as a matter of right to mill their grain in transit and forward the product under the through rates. *Diamond Mills v. B. & M. R. R.*, 9 I. C. C. Rep., 311. In the absence of undue discrimination between shippers or milling points the Commission has uniformly refused to require a carrier to establish transit privileges. The complainant labors under a disadvantage in the marketing of its product at consuming points on the line of the International & Great Northern in competition with mills that are situated on other grain-carrying lines. But this disadvantage is not the result of unjust discrimination on the part of the defendants. Under the pleadings and upon the facts disclosed of record we are unable to find any ground for granting the relief sought. The complaint must therefore be dismissed.

22 I. C. C. Rep.

No. 4028.

HUMBOLDT REFINING COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
ET AL.

Submitted July 24, 1911. Decided February 5, 1912.

Rate of 36 cents per 100 pounds for the transportation of crude petroleum oil in tank cars from Sapulpa, Okla., to Humboldt, Kans., found to have been unreasonable. Reparation awarded.

E. G. Gard for complainant.

J. W. Allen for Missouri, Kansas & Texas Railway Company.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the refining of petroleum oil at Humboldt, Kans.. In its petition, filed April 21, 1911, it alleges that an unreasonable rate was charged it by defendants for the transportation of two carloads of crude petroleum oil from Sapulpa, Okla., to Humboldt, Kans., and asks reparation.

The oil was purchased by complainant f. o. b. at Sapulpa and was shipped, February 18, 1911, in two tank cars, the weight being 87,320 pounds on each car. The bills of lading, prepared by the shipper, described the shipments as fuel oil and carried the following routing instructions: "Frisco & M. K. & T., Vinita." Upon the arrival of the shipments at destination charges were paid by complainant in the sum of \$628.70, based on a rate of 36 cents per 100 pounds.

The St. Louis & San Francisco Railroad connects with the Missouri, Kansas & Texas Railway at Vinita and at Oswego, and a shipment from Sapulpa to Humboldt might be interchanged at either of these points. The first-named carrier gets a haul of 77 miles to Vinita and 144 miles to Oswego. There was in force at the time of shipment a joint commodity rate of 12 cents, applicable through the Oswego junction but not by way of Vinita. This rate was restricted to shipments of crude oil. The defendants claim that fuel oil is a residuum of the oil that has been refined, and therefore must be classified under "petroleum oil and its products," upon which the

rate was 36 cents via the route of movement. This same rate of 36 cents was applicable on either crude oil or fuel oil when shipped by way of Vinita.

The shipper of the oil testified that the commodity shipped was crude oil; that it had received no treatment beyond being pumped out of the ground and into storage tanks. It had been described as fuel oil, he said, merely because the crude is sometimes used for fuel purposes, and it had been the shipper's custom to so describe it. It appears from the evidence that the commodity shipped was crude oil and that the complainant should have paid the rate applicable to crude oil.

The shipping clerk who prepared the bills of lading testified that when he received the order to ship the cars, after reference to a map, he concluded that the route via Vinita was the more direct, and accordingly made out his bills of lading showing routing via "Frisco & M. K. & T., Vinita"; but, understanding that there was a 12-cent rate, and wishing to be sure that it applied via Vinita, he consulted the billing clerk in the local freight office of the St. Louis & San Francisco, and was advised to route the cars in care of the Missouri, Kansas & Texas at Vinita. This is denied on behalf of the carrier, and the testimony as to what information was in fact communicated to the shipper by the railroad's representative is in conflict. Whatever may have been the shipping clerk's understanding, after this conference, as to the rates applicable, the fact remains that the shipments moved according to his instructions, and upon the record we can not say that the initial carrier misrouted them.

However, complainant's case does not rest solely upon the claim that the carrier's agent was responsible for the misrouting. The petition alleges that the rate charged, which we find was lawfully applicable, is grossly unreasonable and unfair. In support of this latter charge the complainant refers to defendant's own tariffs, citing the fact that from Sapulpa to Atchison, Kans., Kansas City and Sugar Creek, Mo., involving a haul through Vinita, the rate was only 13 cents, and that five months after the shipments here in question moved that rate was reduced to 10 cents. It also refers to the fact that the rate from Bartlesville, Okla., on the Missouri, Kansas & Texas Railway, to Kansas City, Kans., was only 10 cents.

The distance from Sapulpa to Humboldt is 163 miles via Vinita, while via Oswego it is 194 miles. The St. Louis & San Francisco has a haul of about 144 miles to Oswego, while the haul to Vinita, which is included in the haul to Oswego, is 77 miles. From Vinita to Humboldt via the Missouri, Kansas & Texas Railway the distance is 86 miles. Our examination of the tariffs discloses that at the time of the movement there was a specific rate of 12 cents on crude oil from Sapulpa to Humboldt, applicable only via Oswego. Via the route

through Vinita there was no joint rate, either class or commodity. Under the classification crude oil in tank cars was rated fifth class. The tariff of the St. Louis & San Francisco named fifth class rate of 24 cents for distances from 75 to 85 miles, applicable on interstate traffic; for the same distance "locally between stations in Oklahoma" it named a rate of 22 cents. By supplement effective March 18, 1911, less than a month after these shipments moved, a distance commodity rate of 8 cents was established from Sapulpa to Vinita, applicable on interstate traffic, and that rate is still maintained. At the time of movement the Missouri, Kansas & Texas Railway maintained a commodity rate of 12 cents from Vinita to Humboldt. Thus the sum of the intermediate rates was 36 cents, as charged. By the alternative provisions of a tariff of the Missouri, Kansas & Texas Railway, effective March 30, 1911, a distance commodity rate of 8 cents became applicable from Vinita to Humboldt. Thus on March 30, 1911, the sum of the intermediate rates became 16 cents, and this is still the sum of the intermediate rates. The 12-cent rate via Oswego yields revenue of 1.2 cents per ton per mile, while the 36-cent combination via Vinita yielded 4.4 cents. The 24-cent factor, Sapulpa to Vinita, yielded 6.23 cents per ton-mile. The present combination rate via Vinita yields nearly 2 cents per ton-mile.

Upon consideration of all the facts and circumstances we are of opinion, and find, that a rate of 36 cents per 100 pounds for the transportation of crude petroleum oil in tank cars from Sapulpa, Okla., to Humboldt, Kans., over defendants' lines via Vinita, Okla., was unjust and unreasonable to the extent it exceeded the aggregate of the present intermediate rates, which is 16 cents. We further find that for the transportation of the shipments as hereinbefore stated, the complainant paid charges at the rate of 36 cents per 100 pounds herein found to have been unreasonable; that it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the rate found to have been reasonable been applied; and that it is, therefore, entitled to an award of reparation in the sum of \$349.28, with interest from February 23, 1911. Inasmuch as there is a satisfactory through route and joint rate via Oswego, it is unnecessary to fix any rate for the future via Vinita. An order will be entered in conformity with the conclusions herein announced.

LONG AND SHORT HAUL DOCKET No. 1243.**IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR RELIEF UNDER THE PROVISIONS OF THE FOURTH SECTION WITH RESPECT TO TRAFFIC MOVING BETWEEN PORTLAND AND SAN FRANCISCO AND OTHER SAN FRANCISCO BAY POINTS.**

Submitted January 16, 1912. Decided February 5, 1912.

1. The Southern Pacific Company petitions for authority to continue all rates in its local tariff No. 161, which contains class rates for the transportation of traffic from San Francisco, Sacramento, and Marysville, Cal., and points grouped therewith, to Portland, Oreg., and intermediate points; and also rates from Portland to San Francisco, Sacramento, Marysville, and points grouped therewith, as well as rates from points south of Portland in Oregon to stations designated in California; but in view of the condition shown in the record, the Commission finds that defendant has not justified the rate situation presented in its tariff in these respects: (a) The application of the same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco; (b) the application of higher rates southbound from Portland to points inland than to San Francisco; (c) the application of higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River; (d) the application of rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland; and (e) the application of unreasonably higher rates at intermediate points.
2. It appears that the San Francisco-Portland rates are forced by water competition, and that they are in part at least less than normal, fair, and reasonable rates.
3. Contentions of defendant that it is neither the duty of this Commission, nor was it contemplated by Congress, that the Commission should give consideration to intermediate rates, where justification was shown by the existence of water competition at the more distant point for lower rates than to the nearer points, not sustained.
4. A railroad is justified under the law in discriminating in favor of one city as against another if they are so differently circumstanced that at one point transportation forces are brought into play which are not or can not be exercised at another point; but a carrier is not justified in deliberately

adopting a policy of preference toward one city as against another. Only the preference or advantage that is due is justifiable, and that advantage which is bestowed upon a city by the mere policy of the carrier and not by reason of actual difference in condition is undue.

5. Instead of denying the application of defendant, the Commission gives permission for it to make a further showing under its application in accordance with the views herein expressed as to the requirements of the law.

Henry Thurtell for Interstate Commerce Commission.

Edward M. Cousin for Willamette Valley shippers, interveners.

Frank H. McCune for Medford Traffic Bureau, and T. Jones Company, interveners.

William R. Wheeler and *Seth Mann* for Traffic Bureau of Merchants' Exchange of San Francisco, intervener.

F. C. Dillard, *W. F. Herrin*, *H. A. Scandrett*, *C. W. Durbrow*, *W. W. Cotten*, and *C. B. Squires* for Southern Pacific Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

In this application the Southern Pacific Company petitions this Commission for authority to continue all rates shown in Southern Pacific Company's local freight tariff No. 161, I. C. C. No. 3021, from and to the points named. Some of these rates are lower to more distant points than to intermediate points, and are also lower from more distant points than from intermediate points. This tariff contains class rates for the transportation of traffic from San Francisco, Sacramento, and Marysville, Cal., and points grouped therewith, to Portland and to intermediate points in Oregon. The tariff also contains rates from Portland to San Francisco, Sacramento, Marysville, and points grouped therewith, as well as rates from points south of Portland in Oregon to the stations designated in California.

Hearing was first had upon this matter in Washington, at which time counsel appeared for the carrier, and protest was made by Willamette Valley shippers against granting the relief asked for. At this hearing it developed that the carrier was unprepared to justify the discrimination existing between its rates to the more distant points and to intermediate points. Thereupon an adjournment was had and testimony taken at Pacific coast cities.

In this case the attorney for the Willamette Valley shippers makes the following protest against the granting of any permission upon the testimony which the carrier has offered:

The carriers have proceeded to deliberately disregard the purpose of the amended fourth section by filing applications to continue the very rates and all the abuses that the law was designed to correct. How can the authority of

the Commission be invoked to relieve the carrier of the operation of the provision in *special cases* when no special cases have been presented? The Commission can not act in *general* nor in all cases, but only in *special cases*. That the purpose of Congress was to disapprove and create a change in the back-haul principle of constructing rates can not be gainsaid. The general principle and the attendant discrimination and abuses present in the typical case under consideration now are ordered abolished; but "in order not to unduly disturb existing conditions in an abrupt manner," the carriers were afforded ample opportunity to voluntarily comply with the general principles of the law, after which the Commission might be appealed to for relief in *special cases*.

Have the carriers made an earnest and faithful effort to sift the inconsistencies and discriminations out of these California-Oregon rates? Is not their action in burdeuing this Commission with the readjustment of every single rate between California and Oregon an affront to the law and an imposition on the Commission? There are no special cases here, and the Commission can not act otherwise than to deny general applications. Was this result designed and forecasted for the purpose of subsequently making an attempt, as has been done in other cases, at meeting the law's requirements by advances in rates? Certainly the defeat of wise regulation of railroad rates by such methods can not be countenanced.

Contrary to the understanding had with the Commission at the original hearing, this case has been presented on the part of the Southern Pacific Company upon the theory that the Commission should not concern itself with the extent of the discrimination obtaining between intermediate points and terminals or with the adjustment between the various cities concerned. Were it not for the gravity of the situation the Commission would be entirely justified in declining to grant the application of the carrier. Acting, however, upon public grounds, we shall proceed to give consideration to the matters presented.

CONTRAST BETWEEN TERMINAL AND INTERMEDIATE RATES.

The first class rate from San Francisco to Portland by rail, a distance of 746 miles, is 51 cents per 100 pounds.

The first class rate from San Francisco to Talent, Oreg., a distance of 409 miles, is \$1.66 per 100 pounds.

The first class rate from Sacramento, a point 90 miles north of San Francisco and connected with San Francisco by water, to Portland, is 51 cents per 100 pounds, while the same rate to Talent, 346 miles, is \$1.57 per 100 pounds.

Marysville is a point near the Sacramento River 52 miles north of Sacramento, to which the Southern Pacific Company extends trans-continental terminal rates. The first class rate from Marysville to Portland, 630 miles, is 70 cents, while the first class rate from Marysville to Talent, 294 miles, is \$1.46 per 100 pounds. The accompanying map and table show the situation.

Talent is the point on the line northbound that takes the highest rate, but Ashland and Medford, Oreg., are cities of greater importance in southern Oregon. The rates to these points are contrasted hereunder:

From San Francisco to Ashland (404 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate	163	142	134	126	107	99	82	59	51	48

From Sacramento to Ashland (340 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate	154	141	127	117	104½	99	72½	53½	45½	45½

From Marysville to Ashland (288 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate	143	130	116	106	97	97	63½	46	39	39

From San Francisco to Medford (416 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate	163	138	130	123	104	96	81	58½	50½	47

From Sacramento to Medford (353 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate	159	138	130	121	104	96	75½	54½	46½	46½

From Marysville to Medford (301 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate	148	134	121	110	101	101	66½	47	40	40

For the long haul from San Francisco to Portland the Southern Pacific charges less than one-third of the rate which it imposes upon an interior city, little more than half of the San Francisco-Portland distance. From Sacramento (to which Portland has water communication by way of San Francisco Bay and the Sacramento River, when freight is transferred at San Francisco) the rate to Portland is less than one-third of the rate from Sacramento to a point just one-half as far.

WATER COMPETITION.

Disregarding almost entirely the wide spread between its Portland and intermediate rates, the Southern Pacific Company sought to justify its violation of the prohibition of the fourth section by establishing the fact that it was called upon to meet water competition in its haul between San Francisco and Portland. This contention is fairly established. It had at its command the volume of freight moved from San Francisco to Portland by the San Francisco & Portland Steamship Company. From this company's statement it would appear that the water tonnage from the different points around San Francisco Bay to Portland, for the year ending June 30, 1911, amounted to 77,584 tons, while the amount carried by

rail was 21,027 tons, showing that this one boat company secured nearly four times as much traffic as did the only rail line which operated between these two points. It was asserted that there were several boat lines competing for this business, but the volume of their traffic was not shown. It is, however, clear, from the statements submitted, that the Southern Pacific Company secured for rail carriage from San Francisco and neighboring points, to Portland, but a small percentage of the San Francisco-Portland traffic. It was shown, too, that of the freight that moved by rail from Portland to Sacramento, Marysville, and to points on San Francisco Bay the total tonnage was about 13,332 tons, while the San Francisco & Portland Steamship Company alone hauled 93,193 tons.

The suggestion was made, in an effort to establish the bona fides of this water competition, that the water rates from San Francisco to Portland were lower than for similar distances on the Atlantic Ocean. It appeared that the water rates between San Francisco and Portland were approximately, for the first four classes, 35 cents, and for the remaining six, 25 cents. The distance in nautical miles that the steamships traveled between San Francisco and Portland is 651 miles. These rates were compared with the water rates between New York and Charleston, a distance of 626 miles, which, under southern classification, were stated to be on a 57-cent scale. The rates were also compared with water rates between Philadelphia and Savannah, 609 nautical miles, which appear to be the same as from New York to Charleston. From Baltimore to Savannah, 545 nautical miles, we again find the rates the same as from New York to Charleston and from Philadelphia to Savannah. This comparison shows that while the first, second, and third classes in southern classification moved on higher rates from New York to Charleston than did the first, second, and third classes under western classification from San Francisco to Portland, that the average of the 12 classes in southern classification is but 28 cents per 100 pounds between New York and Charleston, while for the 10 classes in western classification the average is 29 cents per 100 pounds from San Francisco to Portland. In so far as these figures were introduced for the purpose of showing that the water rates on the Pacific coast were extremely low, even for water rates, the contention is not sustained. It is not to be expected, moreover, that the large tonnage by water, moving between the ports, is ultimately destined to Portland. Much of it is destined to points north, east, and south of Portland, and inasmuch as the Southern Pacific Company receives the back haul into southern Oregon by rail, on that portion of the traffic which goes into that territory, and likewise may receive the haul both north and east, the existence of a not unfriendly water carrier has advantages to a railroad.

we have before us, on every application for deviation from the fourth section, the reasonableness of the rates which are involved in the carrier's application. Surely it was not the intention of Congress to permit a carrier to discriminate in favor of a more distant point to such an extent as to effect not only an undue discrimination against the nearer point, but the imposition of an excessive charge.

In considering the fourth section, it must always be remembered that the law flatly declares it to be unlawful for a carrier to charge more for a shorter than for a longer distance over the same line in the same direction. Under this provision the San Francisco-Talent rate of the Southern Pacific is unlawful. The law, however, establishes a method by which this absolute prohibition may be modified. The Commission is granted power to authorize a carrier, upon its application "in special cases" and after investigation, to charge less for longer than for shorter distances, and "may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section."

Under this last-quoted section the Commission, it would clearly appear, may prescribe the extent to which this otherwise unlawful plan of rate-making may be carried out. We may do this by various methods, (1) as in the *Spokane* and *Reno cases*, 21 I. C. C. Rep., 329, 400, by fixing a geographical limit within which there can be no discrimination, and permitting higher rates from other territory, having regard to the extent of the competition which justifies the discrimination; or (2) we may fix the limit of the rail rate at the more distant point with reference to the rate to intermediate points, thereby prescribing a zone of rate discrimination which may be lawful and justified; or, again, (3) where either of these methods does not seem to be practicable, it would appear entirely reasonable that we should permit the carrier to continue the rates which it has found by experience to be necessary at the more distant point, and, dealing with intermediate points alone, prescribe the reasonable rate which the carrier, as an outgrowth of its policies or its method of making rates, may not exceed.

That we should consider the reasonableness of the intermediate rates in limiting the extent to which discrimination may extend must be apparent to those who are familiar with the system of rate-making which obtains among transcontinental carriers where the rate to the intermediate point for an extended territory is made by a combination of the rate to the more distant point plus the local back to the point of destination. The Southern Pacific Company might increase its rate from a 51-cent scale to a scale of \$1 from San Francisco to Portland and probably lose little, if any, business. To do this would automatically raise intermediate rates based upon Portland to the

extent of 49 cents. Wherever, therefore, rates to intermediate points are made upon rates to more distant points the Commission should not only call upon the carrier to establish the nature of the competition between the basing points, but may properly require the carrier to convince the Commission that the rates so made do not result in unreasonable rates to intermediate points. The Government may properly determine what policy railroads shall pursue so long as the guarantees of the Constitution are safeguarded. If it is injurious to the interstate commerce of this country, and inimical to the public welfare, to permit its railroad highways to be used so as to unduly promote the growth and prosperity of one city as against another, by charging more to the nearer point, it is within the proper sphere of Congress to prohibit absolutely and completely the pursuance of such policy by the railroads. Congress, however, has not seen fit to do this. Out of consideration for the claims of the carriers, and out of respect for those policies under which our commerce has grown, Congress has permitted exceptions to be made to its general policy, when justification is shown therefor. It is not conceivable, however, that in the application of this governmental policy the carriers may be permitted to disregard any of the prohibitions of the law. It would seem, therefore, fundamental in the enforcement of the fourth section that a carrier shall make proof, not only of water competition, as in this case, but of the reasonableness of the rates applied to intermediate points.

To what extent, then, should the Southern Pacific Company be relieved from the command that it shall charge no more to points such as Talent, Medford, and Ashland than it charges to Portland? Assuming that it is demonstrated that the rate from San Francisco to Portland is below the normal, we conclude that while the carrier may make its rates base upon Portland it may not make rates which shall be unreasonable for the haul given. As said before, the theory of the carrier seems to be that any rate into southern Oregon from San Francisco which bases upon Portland's rate is justifiable because Portland is upon the water and the Portland rate is made somewhat with respect to water competition. By this method, however, it can be seen that the rate to Portland plus the rate back might make a rate that would be ridiculously high and yet would be made upon a water competitive rate to a more distant point. To this general question no further consideration need be given, the view of the Commission having been emphatically expressed in the *Intermountain cases*, 21 I. C. C. Rep., 329, 400.

In making rates to the intermediate points based upon the more distant point the carrier should give to the intermediate point the benefit of the Portland rate plus the local back, for more than this

would certainly be unjust. A combination of locals may not be exceeded even when the locals are in part a duplicate of each other. This combination, however, is exceeded to many points in Oregon. Moreover, the back-haul rate which is added to the long-distance rate as a basis for the rate to the intermediate point, if permitted as a factor, must conform to the restrictions of the act as to reasonableness.

The Commission has made investigation into the rates to points in southern Oregon and finds them to be excessive and unreasonable in themselves, thereby emphasizing the discrimination between such points and Portland.

DISCRIMINATION.

Even if the preceding conditions are met, the carrier should not unduly discriminate between its nearer and farther points, and by this is meant that it shall follow no different policy with respect to one point from that which it follows toward all other points similarly situated. A railroad is justified under the law in discriminating in favor of one city as against another if they are so differently circumstanced that at one point transportation forces are brought into play which are not or can not be exercised at another point. But a carrier is not justified in deliberately adopting a policy of preference toward one city as against another. Only the preference or advantage that is due is justifiable, and that advantage which is bestowed upon a city by the mere policy of the carrier and not by reason of actual difference in condition is undue. If one city is on the water and can operate boats to another city, it has an advantage which the rail carriers between the same points may recognize without violating the prohibition against undue preference. So if the water points at one end of a line are grouped, the water points at the other end of the line should be likewise grouped or the influence of the water recognized. Railroad policy must be consistent. This is, roughly, the meaning of the third section of the act.

Let us now see what the real situation is as to the rates covered by this application. The railroad has shown water competition between San Francisco and Portland. But it makes the same rates from many other points, some on the Bay of San Francisco and some on rivers flowing into the bay and some inland. It was shown that there was a water carrier between San Francisco and Portland, but there is no showing that there is direct water competition between any of the other points and Portland, although it is a matter within our knowledge that by transshipment at San Francisco traffic can move by water from most of the points involved to Portland. The carrier has failed to justify, nor has it attempted to justify, rates

from bay and river points to Portland the same as from San Francisco.

While extending San Francisco-Portland rates to bay and river points on the south, the carrier does not extend San Francisco-Portland rates to points on the Willamette River on the north. If there is reason for treating the southern points in a group, why should that same policy not be applied to the northern points? Of this there is no explanation offered by the carrier. Sacramento has the same rate to Portland that San Francisco has. Sacramento has the same first class rate to Oregon City, Salem, Albany, Eugene, and Roseburg, but to Medford Sacramento has a lower rate than San Francisco. What is the explanation of this? On that question the carrier is silent. Can it be that Sacramento is given the benefit of its nearer distance to Medford while being at the same time given the full benefit of the San Francisco rate not only to Portland but to other Willamette valley cities?

Albany is situated 80 miles to the south of Portland, approximately the same distance down the Willamette River that Sacramento is from San Francisco. The rate from Sacramento to Portland is the same as the rate from San Francisco to Portland. The rate from Sacramento to Albany is also the same as from San Francisco to Albany. But the rate from Albany to San Francisco is 15 cents less than the rate from Albany to Sacramento. There is no reason given for this difference. Is not the competition between San Francisco and Sacramento upon freight going by water from Albany through Portland and destined to Sacramento as strong and effective as competition from Sacramento to San Francisco upon freight going by water from Sacramento through San Francisco and Portland to Albany? That is to say, if the rate is the same northbound, why should it not be the same southbound? Furthermore, if the Southern Pacific Company makes no differential between Sacramento and San Francisco on traffic moving to Portland, why should it make a differential on traffic moving to San Francisco from Oregon City and Portland? Here is a violation of the long-and-short-haul clause entirely unexplained.

In view of the condition here presented, we must find that the carrier has not justified the rate situation presented in its tariff in these respects:

(1) The application of the same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco.

(2) The application of higher rates southbound from Portland to points inland than to San Francisco.

(3) The application of higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River.

(4) The application of rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland.

(5) The application of unreasonably higher rates at intermediate points.

Instead, however, of denying the application of the carrier, we shall give permission for it to make a further showing under its application in accordance with the views herein expressed as to the requirements of the law.

22 I. C. C. Rep.

No. 3016.

NATIONAL POLE COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted December 22, 1910. Decided February 5, 1912.

Rate on cedar poles from points in Wisconsin and Michigan to Texas points found to have been unreasonable to the extent it exceeded the rate on lumber contemporaneously in effect from and to said points. *MacGillis & Gibbs v. C. & E. I. R. R. Co.*, 16 I. C. C. Rep., 40, cited and affirmed.

G. M. Stephen for complainant.

S. A. Lynde and *C. C. Wright* for Chicago, St. Paul, Minneapolis & Omaha Railway Company and Chicago & North Western Railway Company.

William Ellis and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

W. T. Hughes and *W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company.

Blackburn Esterline for Chicago & Alton Railroad Company.

James C. Jeffery for St. Louis, Iron Mountain & Southern Railway Company.

J. W. Allen for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in buying and selling cedar poles, ties, etc., and has its principal place of business in Escanaba, Mich. Its petition, filed December 9, 1909, and amendments thereto, allege that the defendants have exacted unreasonable charges for the transportation of certain carload shipments of cedar poles from points in Minnesota, Wisconsin, and Michigan to points in Pennsylvania and Texas. Certain of the shipments involved moved more than two years prior to the filing of this petition, but all such

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had been previously brought to the attention of the Commission within the statutory period of two years after the cause of action accrued.

The ground of the complaint in respect of the shipments to points in Texas is that the rates charged by defendants and paid by complainant for the transportation of the certain shipments of cedar poles in carloads, as hereinafter described, were unjust and unreasonable to the extent they exceeded the rates then in effect on lumber from and to the same points. The principle involved was considered in *MacGillis & Gibbs Co. v. C. & E. I. R. R. Co.*, 16 I. C. C. Rep., 40, wherein it was held that a rate for the transportation of poles which exceeded the rate contemporaneously in effect on lumber from and to the same points was unjust and unreasonable to the extent of such excess. The opinion in the *MacGillis & Gibbs case* was followed in *National Pole Co. v. C., St. P., M. & O. Ry. Co.*, Unreported Opinion No. 124. In both cases reparation was awarded.

The petition includes two shipments made to points in Pennsylvania, one to Ellsworth and the other to Rices Landing. The rates applied on these shipments were 21 cents and 23 cents per 100 pounds, respectively, which we find were the lawfully established rates at the time of shipment. The complainant avers that these rates were unreasonable to the extent they exceeded 17 and 19 cents, respectively. The latter were the rates applicable at the time to Pittsburgh and the complainant contends that they should have been applicable to the respective points of destination. Examination of the tariffs shows that by amendment subsequent to the time these shipments were made the Pittsburgh basis was, as a matter of fact, made applicable to Ellsworth and Rices Landing, but the record contains no evidence to show that the rates charged, which were the lawfully published rates at the time of movement, were in any wise unreasonable.

Among the shipments to Texas points are the following: One from Mizpah, Minn., to Gainesville, Tex., delivered at destination May 10, 1907, upon which charges were collected in the sum of \$153.72, based on a through rate of 63 cents; another from Itasca, Wis., to Stoneburg, Tex., moving August 27, 1907, consisting of a carload of poles weighing 40,200 pounds, upon which charges in the sum of \$227.93 were collected, based on a through rate of 57 cents; another from Kelliher, Minn., to Dallas, Tex., which arrived at destination November, 25, 1907, upon which charges in the sum of \$196.02 were collected, based on a through rate of 60½ cents; and another from Itasca, Wis., to Ringgold, Tex., which shipment arrived at destination September 16, 1907, and on which charges were collected in the sum of \$216.60, based on a through rate of 57 cents.

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Although two hearings were had in this case, the second one being for the express purpose of affording complainant an opportunity to furnish definite and satisfactory proof of the route of movement and other matters touching the shipments mentioned, the record is still incomplete. It wholly fails to show the route over which the shipments actually moved and is so incomplete that we can make no definite or specific findings of fact relative to the four shipments mentioned.

As to the two remaining shipments, one moved from Itasca, Wis., to Sandy Point, Tex., September 30, 1907. The bill of lading covering this shipment specifies routing "Om. Ry." The record contains a letter from the general freight agent of the Chicago, St. Paul, Minneapolis & Omaha Railway Company stating that this shipment moved from "Itasca to Milwaukee, via the Northwestern line; Milwaukee to East St. Louis, via the C. & N. W., Peoria, and the C. & A. Railway, and from East St. Louis in connection with the St. L. I. M. & S. R. R." It further appears that beyond the line of the Iron Mountain the car moved over the rails of the Texas & Pacific and International & Great Northern railways. Freight charges on this shipment were prepaid, the receipt of the initial line showing that \$171 was collected, based on a weight of 30,000 pounds and a through rate of 57 cents. There was no joint rate applicable, but the sum of the intermediate rates was 57 cents, as charged, based on a rate of 10 cents from Itasca to either Milwaukee or Chicago and a rate of 47 cents from the latter junctions to Sandy Point. At the time this shipment moved there was a rate of 10 cents on lumber from Itasca to either Chicago or Milwaukee, subject to a minimum of 24,000 pounds for 34-foot cars or under, while from Chicago or Milwaukee there was a rate on lumber (certain varieties excepted) of 38 cents to Sandy Point, subject to a minimum of 30,000 pounds, except where marked capacity of the car was less. The sum of the intermediate rates applicable on lumber over the route by which this shipment of poles moved was thus 48 cents. A subsequent issue to the tariff, effective June 4, 1908, made the 38-cent rate on lumber applicable to telegraph or telephone poles, with a minimum of 30,000 pounds. August 10, 1908, the factor from Chicago and Milwaukee to Sandy Point was advanced to 41 cents and the sum of the intermediate rates on the latter then became 51 cents. June 4, 1909, the rate from Chicago and Milwaukee on poles was reduced to 40 cents, making the sum of the intermediate rates 50 cents, which latter rate was continued in effect until February 10, 1910, when the rate from Chicago and Milwaukee to Sandy Point was reduced to 38 cents and the sum of the intermediate rates again became 48 cents. Subsequent issues of the Southwestern lines tariffs have established a specific rate of 38 cents from Chicago and Milwaukee to Sandy Point on poles, and

the sum of the intermediate rates at present applicable is 48 cents on poles as well as on lumber.

The other one of these two shipments of poles moved March 28, 1908, from Escanaba, Mich., to Gainesville, Tex. The documents evidencing the transportation of this shipment show that it moved via the Escanaba & Lake Superior Railway and Chicago, Milwaukee & St. Paul Railway to Kansas City, Mo., thence via the Missouri, Kansas & Texas Railway and the Missouri, Kansas & Texas Railway of Texas. The expense bill of the latter carrier shows that the shipment weighed 40,200 pounds, and that charges in the sum of \$229.14 were collected on the basis of a through rate of 57 cents, which we find was the rate lawfully applicable on poles at the time. Contemporaneously the rate on lumber was 48 cents. The rate on poles from Escanaba to Gainesville was subsequently made the same as the rate on lumber from and to the same points, and the pole rate has undergone the same fluctuations which have been noted in reference to shipment from Itasca Dock to Sandy Point mentioned above.

No facts of different nature are presented in the case of the two last-mentioned shipments that incline us to modify or change the opinion expressed in the *MacGillis & Gibbs case, supra*, and, without restating the reasons there given, we hold that the rate upon each of these two shipments of poles were unreasonable to the extent they exceeded the rate contemporaneously in effect upon lumber in carloads from and to the same points. We find that the rate of 57 cents assessed upon each of the two last-named shipments was unreasonable to the extent it exceeded a rate of 48 cents.

We further find that, on September 4, 1907, complainant made a shipment of cedar poles, weighing 30,000 pounds, from Itasca, Wis., to Sandy Point, Tex.; that it paid charges thereon in the sum of \$171, and that said charges were unjust and unreasonable to the extent they exceeded \$144, which would have accrued at the reasonable rate of 48 cents; that complainant was damaged thereby; and that it is therefore entitled to reparation in the sum of \$27, with interest from September 30, 1907.

We further find that, on March 28, 1908, complainant shipped from Escanaba, Mich., to Gainesville, Tex., a carload of poles weighing 40,200 pounds; that it paid charges thereon in the sum of \$229.14, based on a through rate of 57 cents; that said charges were unjust and unreasonable to the extent they exceeded the sum of \$192.96, which would have accrued at the reasonable rate of 48 cents; that complainant was damaged thereby; and that complainant is therefore entitled to reparation in the sum of \$36.18, with interest from April 15, 1908.

An order will be entered in accordance with these conclusions.

No. 4135.

EDISON PORTLAND CEMENT COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

Submitted July 24, 1911. Decided February 5, 1912.

Following rule 68, tariff circular 18-A, cited and approved in *De Camp Bros. & Yule Iron, Coal & Coke Co. v. V. & S. W. Ry. Co.*, 22 I. C. C. Rep., 274; *Held*, That the principal defendant is responsible to complainant in the amount of damages caused by having unlawfully published a tariff showing that it could make delivery on the track of a carrier from whom it had not obtained concurrences, and which carrier refused to participate in the tariff.

F. C. Morris for the complainant.

Douglas Swift and *A. S. Learoyd* for Delaware, Lackawanna & Western Railroad Company.

William C. Coleman for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in manufacturing cement at New Village, N. J. Its petition, filed June 1, 1911, alleges that the published tariff of the Baltimore & Ohio Railroad Company, which is the principal defendant, represented that that carrier could and would make a certain terminal delivery on the tracks of the Erie Railroad at Akron, Ohio; that, relying upon the said tariff, it shipped, in February and March, 1909, from New Village to Akron, via defendants' lines, two carloads of cement, consigned to the Akron Paving and Plaster Company, to which firm, according to the tariff, switching delivery could be made at a charge of \$2.50 per car, which the defendants would absorb; that upon arrival of the cars at Akron they were placed upon a delivery track of the Baltimore & Ohio Railroad, from which the consignee was compelled to haul the shipments at a cost of \$12.60, in addition to the published

22 I. C. C. Rep.

rate. The claim was first presented to the Commission November 4, 1910. Reparation is asked in the amount incurred for drayage.

On February 25, 1909, and on March 11, 1909, the complainant shipped from New Village, N. J., two carloads of cement, each weighing 57,000 pounds. Both cars were consigned to the consignee alleged in the petition, and each was routed "Lack. line, B. & O. & Erie R. R.," and in each bill of lading was inserted a rate of \$2.20 per ton.

At the time the shipments moved there was no joint rate from New Village to Akron in connection with the Erie Railroad. A joint through rate of \$2.20 per ton was published by the Lackawanna and the Baltimore & Ohio railroads, and the latter had on file with the Commission a delivery circular showing the deliveries that it could make at various points on its line. This circular showed the consignee as being located on the Erie tracks at Akron and represented that delivery could be made by switching, for which a charge of \$2.50 would be made by the Erie, and another tariff provided that this charge would be absorbed. The Erie Railroad had not at the time concurred in the delivery tariff of the Baltimore & Ohio and upon arrival of cars refused to accept the same or make the delivery which the tariff of the Baltimore & Ohio represented could be made. The consignee is located upon the Erie tracks, and the tracks of the Baltimore & Ohio, from which it was obliged to take delivery, are distant about one and one-half miles from its plant. It unloaded and drayed the cement to its plant and rendered bills therefor against complainant, which amounted on one car to \$5.85, on the other \$6.75, for which amounts it was given credit by the complainant.

The effect of the action of the Baltimore & Ohio was to make the Erie Railroad a party to its delivery tariff. This the record clearly shows, and this defendant admits that it had no authority to do so. The publication of the Baltimore & Ohio Railroad Company was in direct contravention of the Commission's rules made under the authority of section 6 of the act, to the effect that lawful concurrence must be secured from every carrier shown as participating in a tariff, and that a joint tariff must show the form and number of concurrence of each participating carrier. We do not doubt that complainant was misled by this publication. In accordance with rule 68 of tariff circular 18-A, cited and followed in *De Camp Bros. & Yule Iron, Coal & Coke Co. v. V. & S. W. Ry. Co.*, 22 I. C. C. Rep., 274, we hold that the Baltimore & Ohio is responsible for any damage resulting to complainant from its unwarranted action in showing the Erie Railroad as a delivering carrier.

Upon the record we find that the shipments were made as stated above; that by reason of the inability of the Baltimore & Ohio Railroad Company to make the delivery promised in its tariff the complainant has been damaged in the sum of \$12.60, which it was compelled to pay for drayage from the tracks of the Baltimore & Ohio Railroad to the plant or warehouse of the consignee; and that it is entitled to an award of damages in the said sum, with interest from April 12, 1909, which the Baltimore & Ohio Railroad Company will be required to pay without contribution from the other carriers. An order will be entered accordingly.

22 I. C. C. Rep.

No. 4072.
SWIFT & COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted June 28, 1911. Decided February 5, 1912.

During the period covered by this complaint the Missouri Pacific Railway Company absorbed switching charges on cars containing less-than-carload freight, in lots of 6,000 pounds or more, received from connecting carriers within the switching limits of Kansas City, Mo., destined to Missouri Pacific freight houses or warehouses and thence forwarded to points on its line, but it did not absorb such switching charges on cars handled through its train yards; *Held*, That said arrangement resulted in unjust discrimination against traffic handled through its train yards. Reparation awarded.

Albert H. Veeder, Henry Veeder, and Maurice Weigle for complainant.

James C. Jeffery and H. J. Campbell for Missouri Pacific Railway Company.

W. F. Dickinson and Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture of packing-house products at Kansas City, Kans. By petition, filed May 4, 1911, it alleges that unreasonable and unjustly discriminatory switching charges were assessed by defendants on certain shipments of packing-house products which moved between October, 1907, and February, 1908, from Kansas City, Kans., to the train yards of the Missouri Pacific Railway Company at Kansas City, Mo. The claim was first filed with the Commission September 2, 1909. Reparation is asked.

Complainant's packing house is on the tracks of the Chicago, Rock Island & Pacific Railway in Kansas City, Kans. The shipments covered by the petition, 86 in number, were delivered by the Rock Island to the Missouri Pacific Railway within the switching limits

of Kansas City, for delivery at the train yards of the latter carrier, and subsequent shipment over that line.

At the times of shipment the Missouri Pacific published a rule which provided for the absorption of switching charges on cars containing less-than-carload freight, in lots of 6,000 pounds or over, received from connecting carriers within the switching limits of Kansas City, when such cars were destined to the Missouri Pacific freight houses or warehouses in that city and thence forwarded over the lines of said carrier. Effective February 17, 1908, this provision was amended by the Missouri Pacific Railway to cover movements to the train yards as well as to freight stations and warehouses.

The freight houses, warehouses, and the train yards are adjacent to each other, and the haul to the train yards is slightly shorter and involves somewhat less handling of the cars. The shipments in question were loaded in so-called "peddler" cars in train order; no other goods were contained in the cars; and it was in every way more convenient to the carrier to take the cars direct to the train yards rather than to handle the shipments through the freight houses and thence to the train yards. Apparently the cars were handled through the train yards for convenience of the carrier and not by order of complainant. Upon all the facts of record we are of opinion that the nonabsorption of the switching charges in this case constituted an unjust discrimination against this complainant and its traffic.

We find that between October 22, 1907, and February 15, 1908, complainant shipped from its warehouse in Kansas City, Kans., to the train yards of the Missouri Pacific Railway Company in Kansas City, Mo., over the lines of defendant carriers, 86 cars containing less-than-carload shipments of packing-house products in lots of 6,000 pounds or more, which were forwarded to points on the line of that defendant; that switching charges aggregating \$258 were collected from complainant on these cars; that the switching charges so collected constituted an unjust discrimination against this complainant and its said traffic, and that it was thereby damaged in the amount of said charges; and that complainant is therefore entitled to reparation in the sum of \$258, with interest from May 15, 1908. The Chicago, Rock Island & Pacific Railway Company took part in the movement of these cars, but inasmuch as the switching charges should have been absorbed by the Missouri Pacific Railway Company, no order will be made as to the former carrier.

No. 2713.

MICHIGAN HARDWOOD MANUFACTURERS' ASSOCIATION

v.

TRANSCONTINENTAL FREIGHT BUREAU ET AL

Submitted November 10, 1910. Decided January 8, 1912.

Present rate of 85 cents per 100 pounds for the transportation of hardwood lumber from certain points in southern Michigan to Pacific coast terminals and intermediate points found unreasonable, and maximum rate of 80 cents per 100 pounds prescribed for the future.

W. A. Percy for complainant.

T. J. Norton, Robert Dunlap, and J. L. Coleman for Atchison, Topeka & Santa Fe Railway Company.

Hale Holden for Burlington & Missouri River Railroad Company in Nebraska and Chicago, Burlington & Quincy Railroad Company.

Baker, Botts, Parker & Garwood for Texas & New Orleans Railroad Company and Galveston, Harrisburg & San Antonio Railway Company.

J. D. Armstrong for Great Northern Railway Company.

J. P. Blair for Louisiana Western Railroad Company and Morgan's Louisiana & Texas Railroad & Steamship Company.

Charles Donnelly for Northern Pacific Railway Company.

W. W. Cotton for Oregon Railroad & Navigation Company.

E. L. Williams for Oregon Short Line Railroad Company.

P. F. Dunne, C. W. Durbrow, and F. C. Dillard for Southern Pacific Company.

N. H. Loomis, Edson Rich, and F. C. Dillard for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

For some years previous to 1904 transcontinental lines had applied a rate of 75 cents per 100 pounds to the transportation of hardwood lumber from all points upon the Missouri River and east to Pacific coast terminals, but during that year this rate was advanced to 85 cents. In consequence, certain manufacturers of and

in various kinds of hardwood lumber doing business mainly in southern Wisconsin and at Memphis, Tenn., complained that the above advance was unjust and unreasonable, and upon an investigation of this complaint the Commission so held, ordering a restoration of the 75-cent rate. *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C. Rep., 668.

The original 75-cent rate, as already stated, had been a blanket rate applying from all territory east of the Missouri River, and the 85-cent rate covered the same territory. We held that 75 cents should not be exceeded from Chicago territory and Mississippi River points, as then defined in transcontinental freight tariffs, but we declined to extend that rate to territory farther east. The language of the Commission was as follows:

One reason advanced by the defendants in support of the reasonableness of the 85-cent rate is the fact that this rate applies as a blanket rate all the way to the Atlantic seaboard. The lumber handled by the complainants is mainly shipped from Wisconsin points and from Memphis and similar points. In considering the reasonableness of this rate we have treated Chicago and Memphis as typical points of origin. The considerations which lead to the conclusion that a rate of 75 cents is sufficient from these points would not induce a similar conclusion as to more distant points. This rate will therefore be made applicable from Chicago and Chicago points, and from Mississippi River points which include Memphis. If the defendants desire they may apply a higher rate from territory farther east; we can not upon the record intelligently indicate how much higher.

The year following the promulgation of this decision the complainants filed the present complaint, alleging, in substance, that they were manufacturers of and dealers in hardwood lumber at points immediately east of the territory to which the 75-cent rate had been restored; that they competed directly with mills located in the 75-cent territory; that 10 cents per 100 pounds amounted to \$4 per 1,000 feet upon rough hardwood lumber, and from \$2 to \$2.50 per 1,000 feet upon dressed hardwood lumber, and that under this handicap they were unable to sell upon the Pacific coast in competition with mills in the 75-cent zone. They asked that the 75-cent rate be extended to embrace the territory in which they operate.

We find nothing in the present record which leads us to reconsider our original holding in the *Burgess case*. We did not then feel, and we do not now feel, that these transcontinental lines can be required to carry the 75-cent rate farther east than the territory specified in the *Burgess case*. It may be unfortunate for the complainants that their mills are located to the east of the dividing line while the mills of their competitors are situated to the west of it, but there must be a division somewhere, and if we were to embrace these mills within the 75-cent group, we should then be met with the same demand by other mills farther east. It should also be noted that while these mills are at a disadvantage in the west they possess an advantage in

eastern markets, owing to greater proximity and, on the whole, better rates.

The only question open to us, then, is the amount of the difference which shall prevail between 75-cent territory and the mills of the complainants. If we were considering what would be a reasonable blanket rate to be applied to all territory east of the present 75-cent group, 85 cents might not seem excessive, but these complainants are located upon the extreme western edge of the territory to which that rate would apply and immediately east of the territory to which the 75-cent rate now applies, and their mills are in sharp competition with those paying the 75-cent rate. They insist that a spread of 10 cents, equivalent, as already said, to \$4 per 1,000 feet upon rough hardwood lumber, is too great.

In fixing commodity rates from eastern defined territory to Spokane we added from 6 to 7 per cent of the Chicago rate for the rate from Cincinnati-Detroit territory, a territory defined in the Spokane tariffs of the defendants, which is roughly bounded upon the east by Lake Huron and a line from Detroit to Cincinnati. We are of the opinion and find that the present rate of 85 cents is excessive from points in territory lying east of the present 75-cent territory and on, south, and west of the following line: Including points located on a line beginning at Muskegon, Mich.; thence via Toledo, Saginaw & Muskegon Railway, through Sparta, Cedar Springs, and Greenville to Sheridan, Mich.; thence via Pere Marquette Railroad, north through Edmore, Alma, and St. Louis to Saginaw, Mich.; thence via Michigan Central Railroad north to West Bay City, Mich.; thence via Michigan Central Railroad south to Vassar, Mich.; thence via Pere Marquette Railroad to Port Huron, Mich.; thence via Grand Trunk Western Railway to Fort Gratiot, Mich.; thence via Grand Trunk Railway to Detroit, Mich.; thence via Detroit & Toledo Shore Line Railroad to Toledo, Ohio; thence via Wheeling & Lake Erie Railroad through Oak Harbor to Fremont, Ohio; thence via Lake Erie & Western Railroad to Burgoon, Ohio; thence via Pennsylvania Company to Tiffin, Ohio; thence via the Sandusky division of Cleveland, Cincinnati, Chicago & St. Louis Railway through Carey, Forest, Kenton, Bellefontaine, Urbana to Springfield, Ohio; thence via Pittsburgh, Cincinnati, Chicago & St. Louis Railway through Xenia, Morrow, and Loveland to Cincinnati, Ohio; thence via Louisville & Nashville Railroad through Newport, Latonia, Paris, and Winchester to Richmond, Ky.; thence to Nicholasville, Ky.; thence via Cincinnati, New Orleans & Texas Pacific Railway to Danville, Ky.; thence via Burgin and Southern Railway through Harrodsburg and Shelbyville to Louisville, Ky.; thence via Louisville & Nashville Railroad to Elizabethtown, Ky.; thence via

Illinois Central Railroad to Hodgenville, Ky., through Elizabethtown, Litchfield, and Princeton to Hopkinsville, Ky.; thence through Princeton, Paducah, and Fulton, Ky., Jackson, Tenn., Corinth, Miss., and Haleyville, Ala., to Jasper, Ala.; thence via St. Louis & San Francisco Railroad to Adamsville, Ala.; thence via St. Louis & San Francisco Railroad through Jasper, Ala., to Tupelo, Miss.; thence via Mobile & Ohio Railroad to West Point, Miss.; thence via Southern Railway in Mississippi, to Columbus, Miss.; thence via Mobile & Ohio Railroad through Artesia and Meridian, Miss., to and including Mobile, Ala.; and that the rate from this territory to Pacific coast terminals and intermediate points should not exceed 80 cents per 100 pounds.

The complaint in this case only refers to points in southern Michigan, and while it has seemed proper to indicate, as above, the extent to which in our opinion the 80-cent rate should be finally applied, our order can be no broader than the complaint and will be confined to points in the state of Michigan on, south, and west of the line above designated, to which the rate of 75 cents does not already apply. Nor will the defendants be in any way prejudiced in subsequent proceedings if it appears that the line as designated is improperly drawn, it being merely intended as a suggestion to the carriers for a final disposition of this question based on our present knowledge of the situation.

The complainants ask for reparation upon past shipments, and, following the *Burgess case*, we find that since June 28, 1907, the rate of 85 cents applied from these Michigan points has been unreasonable, and that the complainants are entitled to reparation upon that basis; all questions as to the statute of limitations and the amount of reparation being reserved for further consideration.

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No. 4374.

SUNFLOWER GLASS COMPANY ET AL.
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted November 2, 1911. Decided January 15, 1912.

Complaint alleged that defendants' rates on window glass from the Kansas field to the upper Mississippi River crossings are unreasonable and unduly discriminatory as compared with the rates on that commodity from the east to said crossings; *Held*, That the facts disclosed by the record show that no discrimination exists and that the present rates from the Kansas field are not unreasonable.

J. P. Casey and F. E. Wear for complainants.

D. R. Lincoln for Missouri Pacific Railway Company.

T. J. Norton and J. R. Koontz for Atchison, Topeka & Santa Fe Railway Company.

W. F. Dickinson and Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman*:

The complainants are manufacturers of window glass in what is known as the gas belt of Kansas, situated in the southeastern part of that state, of which Coffeyville may be selected as a representative point. The complaint is that rates on window glass to the upper Mississippi River crossings, like Dubuque, Davenport, Fort Madison, Muscatine, etc., are too high.

Window glass is produced in large quantities in Indiana and eastern Ohio, and the product of those factories comes into sharp competition with that produced by the complainants at these Mississippi River points. Until some two years ago the commodity rate on window glass in carloads from producing points in Ohio and Indiana was 18 cents per 100 pounds to St. Louis and 23½ cents to these upper crossings. In 1909 the Roach & Musser Sash and Door Company, located at Muscatine, Iowa, filed with this Commission a complaint alleging that the rate of 23 cents to that and similar points was unreasonable in itself and discriminatory as compared with that to

Louis. A hearing was had upon this complaint, but before the case was argued and submitted the carriers made a voluntary readjustment of their tariffs by which a rate of 19 cents was established to the points in question, the rate to St. Louis remaining the same.

The corresponding rate on window glass from these Kansas points of production to St. Louis before the readjustment just referred to had been to St. Louis 22 cents, to the upper crossings 27 cents, and the complainants say that upon this adjustment they could fairly compete with eastern factories.

When the rate from the east was reduced from 23 cents to 19 cents to these points in question no reduction was made from the mills of the complainants, and they now assert that their rate ought to have been reduced as much as the rate from the east. It will be seen therefore that the real complaint of the complainants is not that 27 cents is unreasonable to these upper Mississippi River crossings—for that rate was satisfactory—but that the present rate is too high as compared with the 19-cent rate from the east.

The defendants which carry this business from the Kansas points to the Mississippi River do not, except to a very limited extent, participate in the transportation from the east to these same points. Rates from the east are dominated and the business mainly handled by lines having no connection with the defendants. Strictly speaking, therefore, these defendants can not be said to discriminate by reason of the fact that they maintain a higher rate from Kansas points than other lines over which they have no control maintain from the east.

At the same time, railroads owe to the communities served by them the duty to maintain rates which are fairly adjusted with respect to similar rates from and to competing territory, having reference to the general adjustment of rates and all the circumstances involved. Perhaps all this would be best expressed by saying that these defendants ought to maintain from the Kansas field a rate which is fairly in line with the general level of rates. We may inquire, therefore, whether a rate of 27 cents from the Kansas field for lines operating in that territory is fairly related to a rate of 19 cents from the east over lines in that territory.

The distance to these points from the east is somewhat less than from Kansas points of production. It was said that the average from the east would be about 450 miles as compared with 500 miles from Kansas. While this difference in distance would justify some difference in the rate, manifestly it would not excuse anything like the present difference.

It is well understood that the general level of rates in central freight association territory east of the Mississippi River is very much lower than that prevailing in territory west of that river. For

example, rates in cents per 100 pounds upon the numbered classes by the Santa Fe from Coffeyville, Kans., to Fort Madison, Iowa, as compared with corresponding rates from Columbus, Ohio, to Fort Madison are as follows:

Rates from Coffeyville to Fort Madison—

Class----	1	2	3	4	5
Rate ----	101	83	69½	52	43

Rates from Columbus to Fort Madison—

Class----	1	2	3	4	5	6
Rate ----	59	51½	41	29½	24½	20

Glass in carloads moves at the fifth class rate under both western and official classifications, and the difference in the above class rates perhaps fairly represents the difference in the general level of rates.

It should also be noted that the distances from the eastern fields to the various Mississippi River crossings from St. Louis north to the northern line of the state of Iowa are substantially the same, so that upon the score of the cost of service it is difficult to sustain a much higher rate to the upper crossings than to St. Louis. Rates from the east to these points in question were reduced for that reason. Upon the other hand the distances from the Kansas field to St. Louis are very much less than to the upper crossings, so that the same reason which induced and compelled a reduction from the east is not operative to these points from the west.

Upon the whole, we are of opinion and find that no discrimination exists and that the present rates from this Kansas field can not be pronounced unreasonable.

The complaint will therefore be dismissed.

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No. 3731.

VIRGINIA-CAROLINA CHEMICAL COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY.

Submitted April 25, 1911. Decided January 15, 1912.

1. Defendant maintained from Charleston, S. C., to Gainesville, Fla., commodity rates of \$3.10 per ton on fertilizer and \$2.25 on fertilizer material, governed in each case by the provisions of the classification and exceptions thereto. These latter schedules contained a list of articles entitled to be shipped as fertilizer, but contained no list of articles that might be shipped as fertilizer material.
2. With reference to the application of the \$3.10 rate on various carload shipments of articles listed in the classification as entitled to fertilizer rates; *Held*, That \$3.10 was the rate legally applicable to complainant's shipments, and that the same is not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

H. W. B. Glover for complainant.

Frank W. Gwathmey for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture of fertilizer and has offices at Atlanta, Ga. By petition, filed December 23, 1910, it alleges that the charges collected by defendant for the transportation of certain shipments of bulk acid phosphate from Charleston, S. C., to Gainesville, Fla., were unreasonable. The matter was first brought to the attention of the Commission February 17, 1910. Reparation is asked.

During the month of March, 1908, complainant shipped from Charleston to Gainesville 4 carloads of bulk acid phosphate, aggregating 200,000 pounds, upon which freight charges were collected in the sum of \$310, based upon a commodity rate of \$3.10 per ton, applicable to fertilizers, including bulk acid phosphate and other articles specifically listed as fertilizers in the southern classification, in connection with Florida exception sheet, to which the tariff refers

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for a list of articles taking fertilizer rates. The list in the classification included acid phosphate, but that in the Florida exception sheet did not. Under the tariff then effective, the charges were correctly assessed.

At the hearing complainant amended its petition to include 4 cars of sulphate of potash, 1 car of nitrate of soda and 4 cars of dry-milled phosphate plaster, the aggregate weight of which was 457,823 pounds. Upon these shipments which moved from March 26 to September 22, 1908, inclusive, from Charleston to Gainesville, charges aggregating \$709.62 were assessed, based on the fertilizer rate of \$3.10. These latter shipments were also included in the informal complaint hereinbefore referred to.

By tariff, A. C. L., I. C. C. No. 5320, effective February 16, 1907, defendant published from Charleston to Gainesville a commodity rate of \$3.10 per ton on fertilizer, also a rate of \$2.25 per ton, applicable on fertilizer "when consigned to fertilizer factories." This tariff was governed by the southern classification and Florida exception sheet, to which reference is made for a list of articles upon which the rates named may be applied.

December 28, 1907, the tariff referred to above was superseded by I. C. C. No. 5936 (effective when shipments moved), which brought forward the \$3.10 rate, but omitted the \$2.25 rate "when consigned to fertilizer factories." On December 18, 1908, in Supplement No. 67 to I. C. C. No. 4262, the carriers published a rate of \$2.25 on "fertilizer material," but the tariff did not contain within itself any list of articles upon which this rate applied. It is governed by southern classification in connection with note 19 (Florida exceptions). Reference to the classification discloses that while it includes (as does also note 19) a list of articles taking *fertilizer* rates, no provision whatever is made for articles taking "fertilizer-material" rates. It seems certain, therefore, that the last-mentioned rate of \$2.25 did not lawfully apply to shipments of bulk acid phosphate. Indeed, under our rulings relative to the application of specific commodity rates, the \$2.25 rate could not have been applied in any instance.

At the time these shipments moved there was in effect, tariff A. C. L., I. C. C. No. 5489, a commodity rate of \$1.50 per ton, applicable from Charleston to Jacksonville, Fla., on articles taking fertilizer rates as listed in the southern classification, which, as we have seen, included acid phosphate. The same tariff also named a commodity rate of 75 cents per ton from Jacksonville to Gainesville, applicable to *fertilizer material* "when for fertilizer factories;" the articles comprised in the term fertilizer material were not specified in the tariff; instead it provided that rates between Jacksonville and Florida points should be subject to the Florida classification, but this latter schedule was not filed with the Commission. In the same tariff

is also published a class-M rate of \$1.60 from Jacksonville to Gainesville, but this rate, like the commodity rate on fertilizer material, was also governed by the Florida classification, which, as just stated, was not on file with the Commission. Neither of the last-named factors was, therefore, available for the purpose of constructing, in connection with the \$1.50 rate to Jacksonville, a through interstate rate to Gainesville.

Effective March 7, 1910, the defendants canceled the intermediate rates in the last-named tariff and reissued them in Hinton's tariff, I. C. C. No. A-27. This tariff, which is still in effect, names a rate of \$3.10 on fertilizer, including acid phosphate, applicable from Charleston to Gainesville, and a rate of \$1.60 from Jacksonville to Gainesville, both governed by the southern classification in connection with note 19. The tariff also carries rates from Charleston to Gainesville of \$2.25 per ton and from Jacksonville to Gainesville of 75 cents per ton on fertilizer material. The fertilizer-material rates last named are applicable to commodities particularly specified in note 3 of the tariff, which does not, however, include acid phosphate. Furthermore, the rates are limited to imported material, and there is nothing of record to show that the shipments in question were tendered or accepted by the carriers as other than local shipments. Since May 1, 1911, the tariff has carried a rate of \$2.25 on dry milled plaster, Charleston to Gainesville.

The question remains, were the shipments involved properly assessed as fertilizer? Much confusion has been thrown into the case by the efforts of complainant to show that bulk acid phosphate is a fertilizer material and not a fertilizer. The defendant, while denying complainant's contention as to the character of bulk acid phosphate, admitted that sulphate of potash and nitrate of soda were "fertilizer materials," and should have been charged as such. It appears from testimony introduced on behalf of complainant that all of the commodities specified are fertilizer materials in the sense that each is usually combined with one or more articles in the manufacture of a complete fertilizer, and is seldom used in the crude state; but it also appears that in certain cases each of the so-called materials is considered as a complete fertilizer. It was shown that different communities require different fertilizers; that scarcely any two farmers would want the same mixture; and that each of the commodities involved is, to some extent, shipped direct to consumers.

The tariffs carry rates on fertilizer and also on fertilizer material. They refer, in each case, to the classification and exception sheets for a list of articles which may be shipped thereunder. The distinction between fertilizers and fertilizer materials for transportation purposes is to be determined, therefore, by reference to the classification and exception sheets; but while these latter contain a list of

articles taking fertilizer rates, they contain no list of articles taking "fertilizer-material" rates. Therefore no application of the latter rates can be made. Rates which were formerly in effect on fertilizer "when consigned to fertilizer factories," could only have had the effect of discriminating between the shippers or the receivers. The rule is well established that a rate can not be based upon the use to which the commodity is to be devoted; neither can a rate be confined in its terms or application to an individual or a class; it must be open to all shippers alike.

It is our conclusion and finding that the legally established rate of \$3.10 on fertilizer from Charleston to Gainesville, specifically applicable in carloads upon any and all of the commodities involved, has not been shown to have been unreasonable so far as it applies to the commodities in question in this complaint. There was, and is, no legally published rate on fertilizer materials as such, and the record contains no data to show what differences, if any, should be made in the rate.

The complaint will be dismissed.

22 I. C. C. Rep.

No. 3956.

**NEW ENGLAND COAL & COKE COMPANY
v.
NORFOLK & WESTERN RAILWAY COMPANY ET AL**

Submitted December 2, 1911. Decided February 5, 1912.

1. Trimming, or leveling coal in the holds of ships, is a necessary service in connection with the transportation of coal by water, and, where performed by the rail carriers, it must be regarded as a part of the delivery. When defendants undertake to render such service, any charge therefor is subject to regulation by this Commission.
2. The charge of 3 cents per ton for trimming and 4.5 cents per ton for dumping and trimming not found to have been unreasonable. Charge of the Virginian Railway of 4.5 cents per ton for trimming alone found to have been unreasonable to the extent it exceeded 3 cents per ton. Reparation awarded.

Lawrence A. Ford and Charles D. Drayton for complainant.

R. Walton Moore, Merrel P. Callaway, and Charles J. Rixey, jr., for Norfolk & Western Railway Company.

William A. Parker for Baltimore & Ohio Railroad Company.

H. T. Wickham for Chesapeake & Ohio Railway Company.

H. T. Hall for Virginian Railway Company.

Lawrence Greer and F. C. Nicodemus, jr., for Western Maryland Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

This proceeding involves the reasonableness of charges collected at certain Virginia and Maryland ports for "trimming" or leveling coal in the holds of ships.

Complainant is a corporation engaged in buying, selling, and transporting coal by water. Its principal office is in Boston, Mass. The petition was filed March 27, 1911.

The defendants transport coal from various interstate points, particularly from West Virginia, to the ports for transshipment. At their respective termini extensive coal piers have been erected. Those of the Norfolk & Western are at Lambert's Point; those of

22 I. C. C. Rep.

defendants have undertaken to effect safe and complete delivery to vessels seeking cargoes at these ports. The transshipping agencies were constructed not only as a necessity for the rail carriers in the successful conduct of their business, but in order to attract ships to their piers, where cargoes might be loaded with economy and dispatch. The trimming service is a factor in the transshipment of coal. For the purpose of loading, the ship is to some extent under the domination of the rail carriers. When it comes alongside the pier the laborers enter thereon to manipulate the chutes and thereby put the transshipping agencies into operation. As the loading progresses it becomes necessary for some of these laborers to board the ship and to descend into the hold and distribute the coal. This service is an essential link in effecting delivery because no complete and reasonable delivery can otherwise be accomplished. Nor do we think it the duty of the consignee to unload the cars when the rail carriers own and operate the unloading instrumentalities, and where it is impossible for the consignee to accept delivery in any other way. Indeed, under the existing arrangement, the water carriers have no choice but to employ the facilities provided by the rail carriers, who offer to the public a transportation service with delivery in this manner. Where the carriers have undertaken to deliver the coal and have appropriated all the reasonable and practical means for so doing, they can not be heard to say that they have performed the obligations resting upon them, or that the transportation has ended

or effected. The agencies upon the pier or this purpose are inadequate for the coal, and such agencies have been supplied upon the pier and others upon the ship, for delivery. As will appear further in the evidence of the defendants provide that the agencies for dumping, while others exclude dumping charge for dumping and trimming service, and the transportation service, and are selected that they may be connected with the transportation service, consider the various operations, whether or not defendants perform this trimming service, when the service is subject to regulation

for having this special
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 tractor or laborer to

superintendent of terminals, and, while it appears that the entire trimming charge, in such cases, goes to the stevedore, the contracts which were filed show that the stevedore undertakes to perform the work at a "reasonable charge." The relation of principal and agent clearly exists, and we can not perceive that the interposition of an agency directly commissioned by the carrier to perform a specific service from which the carrier greatly benefits removes such carrier from connection with the transaction.

Likewise immaterial is the argument that the rail carrier can not be compelled to render such service, for it is well established that, while carriers voluntarily may do what this Commission can not compel them to do, it is also true that such voluntary undertaking may subject the charge therefor to regulation by this Commission.

To dispose of the argument that the rail transportation ends at the top or knuckle of the pier requires a more extensive review. Complainant is the owner of practically all the coal transported by it. This coal is purchased f. o. b. tide, which is interpreted to mean that the vendor is required to deliver into the hold of the vessel. The charge for trimming, however, is always paid by the ship. The coal is billed from the mines to the agent of the shipper at the pier, and this agent pays the freight charges to the rail carriers and gives instructions as to loading the coal upon the vessels. There is no through route or joint rate or any common control, management, or arrangement between the rail and the water carriers for continuous carriage or shipment from origin to destination. The coal moves to the port upon a transshipment rate, and the schedules naming the trimming charges are not filed with this Commission.

Section 1 of the act provides that—

The term "transportation" shall include • • • all instrumentalities and facilities of shipment or carriage, irrespective of ownership or any contract, express or implied, for the use thereof, and all services in connection with the • • • delivery • • • and handling of property transported. • • •

And it is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce • • • just and reasonable regulations affecting • • • the facilities for transportation • • • and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this act upon just and reasonable terms.

The piers erected by the several defendants, including grading, rails, and land, represent an investment of approximately two million dollars each. It can not be doubted that in making such outlays for the establishment of transshipping facilities and in appropriating the opportunities and advantages for handling the coal,

defendants have undertaken to effect safe and complete delivery to vessels seeking cargoes at these ports. The transshipping agencies were constructed not only as a necessity for the rail carriers in the successful conduct of their business, but in order to attract ships to their piers, where cargoes might be loaded with economy and dispatch. The trimming service is a factor in the transshipment of coal. For the purpose of loading, the ship is to some extent under the domination of the rail carriers. When it comes alongside the pier the laborers enter thereon to manipulate the chutes and thereby put the transshipping agencies into operation. As the loading progresses it becomes necessary for some of these laborers to board the ship and to descend into the hold and distribute the coal. This service is an essential link in effecting delivery because no complete and reasonable delivery can otherwise be accomplished. Nor do we think it the duty of the consignee to unload the cars when the rail carriers own and operate the unloading instrumentalities, and where it is impossible for the consignee to accept delivery in any other way. Indeed, under the existing arrangement, the water carriers have no choice but to employ the facilities provided by the rail carriers, who offer to the public a transportation service with delivery in this manner. Where the carriers have undertaken to deliver the coal and have appropriated all the reasonable and practical means for so doing, they can not be heard to say that they have performed the obligations resting upon them, or that the transportation has ended until delivery is completely effected. The agencies upon the pier employed by the carrier for this purpose are inadequate for the proper distribution of the coal, and such agencies have been supplemented by employees, some upon the pier and others upon the ship, engaged as a unit in effecting delivery. As will appear further in this report, the tariffs of some of the defendants provide that the transshipment rate includes dumping, while others exclude dumping in such rate and make a separate charge for dumping and trimming combined. If dumping is a part of the transportation service, and if dumping and trimming are so connected that they may be combined, then trimming also must be a part of the transportation service. Under the circumstances we must consider the various operations of transshipment as a unit and, whether or not defendants legally might be compelled to render this trimming service, when they undertake so to do any charge therefor is subject to regulation by this Commission.

Defendants strongly urge the necessity for having this special work restricted in its performance to one man or one organization. With their heavy investments we think it probably would be imprudent if defendants allowed any and every contractor or laborer to

perform this work. Dumpers and trimmers must be experienced. They must be available at any hour of the day or night, and as their employment is more or less sporadic, it can well be imagined that some definite organization is necessary to insure the safe and expeditious discharge of their duties. While but one stevedore is employed by any of the defendants, it is a fact that vessels may carry their own trimmers or independently contract therefor. Complainant, however, has never availed itself of this privilege.

We come now to consider the reasonableness of the charges imposed.

Dependent upon the character of the vessel, these charges at the Maryland ports vary from 3 to 10 cents and at the Virginia and Chesapeake ports from 4½ to 10 cents. Seven cents appears to be the uniform charge for cargo coal in steamers and in schooners, and 10 cents is charged for bunker coal. These charges are assessed against the total number of tons loaded aboard the ship, the actual tonnage shoveled being impossible to determine.

Complainant's vessels are of a so-called self-trimming type; that is, they are constructed so as to distribute a considerable quantity of the coal without human intervention, thereby minimizing the amount of labor required. In recognition of this fact, the lowest charge is made against vessels of this type—4.5 cents at the Chesapeake ports and 3 cents at the Maryland ports.

It is well here to note that throughout this case dumping and trimming have been confused. As already stated, trimming means leveling the coal in the hold of the vessel; dumping, the physical discharge of the coal from the car into the chute. The Baltimore & Ohio and the Western Maryland include dumping in their rates to the port and make a charge of 3 cents for trimming. The Chesapeake & Ohio and the Norfolk & Western exclude dumping in their port rates and make a charge of 4.5 cents for dumping and trimming. The Virginian Railway, in its transshipment rate, specifically includes dumping, while its charge for trimming alone is 4.5 cents. This difference in the charges made by the Virginian Railway will be treated separately.

Prior to 1907 the charge upon cargo coal for all steamers at all of the ports in question was 7 cents per ton. Complainant's vessels then appeared with their self-trimming features, and after negotiating with defendants secured a reduction to the present rates. These charges appear to be lower than those made at any other ports, either domestic or foreign. Possibly the lowest charge at any other port for this service upon so-called self-trimming ships is at Swansea, Wales, where the rate is 2 pence (4 cents) per ton. An exhibit filed

by the Chesapeake & Ohio Railroad showing the cost per ton for trimming and dumping is illustrative, and follows:

	Cents.
Trimming -----	2. 50
Dumping -----	1. 27
Clerical hire -----	. 22
Insurance -----	. 07
Tools -----	. 01
Superintendence -----	. 17
Profit to stevedore -----	. 23
Total -----	4. 50

Another exhibit filed by the same defendant shows the following receipts and expenditures of its stevedore for the year 1910:

Total receipts -----	\$248, 285. 10
Total expenditures -----	242, 900. 00
Profit to stevedore -----	5, 885. 10
To which should be added yearly salary drawn by stevedore and included in total expenditures -----	8, 600. 00
Total revenue to stevedore -----	8, 985. 10

From all the facts before us we are unable to find that the charge of 3 cents for trimming or the charge of 4.5 cents for dumping and trimming, as applied to vessels of the type we have here considered, is unreasonable. In the case of the Virginian Railway, however, the charge for trimming is 4.5 cents and its charge for dumping is included in its transshipment rate. That defendant filed an exhibit showing an aggregate cost of \$185,377.56 for delivering 1,604,495 tons of coal on board all vessels, April 1, 1909, to February 28, 1911. This cost was made up as follows:

Superintendent, clerks, and office expenses -----	\$11, 779. 46
Wages for electrical and mechanical operation -----	18, 307. 30
Foremen, trimmers, and dumpers -----	57, 495. 85
Yard expenses and supplies -----	16, 917. 97
Electric current -----	13, 947. 00
Dock expenses and supplies -----	13, 047. 04
Miscellaneous, taxes, insurance, and dredging -----	29, 370. 71
Operating tugs -----	24, 512. 23

As the cost of dumping is included in the rate to the port for transshipment, to arrive at the correct cost for trimming alone the cost of dumping should be excluded. Most of the above items relate to dumping. Only the following appear to have any connection with trimming:

Superintendent, clerks, and office expenses -----	\$11, 779. 46
Foremen, trimmers, and dumpers -----	57, 495. 85
Total -----	69, 275. 31

Assuming that one-half of this amount is properly chargeable to dumping, we have an average cost of 2.16 cents per ton for trimming all coal. Even this average, however, is not fairly representative of the cost for self-trimming vessels.

Under all the circumstances, we are of opinion and find that the charge of 4.5 cents made by the Virginian Railway at Sewall's Point for trimming coal upon so-called self-trimming vessels of the type operated by complainant is unreasonable. It is in evidence that the cost of actually dumping the coal is 1.27 cents per ton, exclusive of clerical hire, tools, insurance, etc. The difference made by the other defendants between the charges for trimming and for dumping and trimming is $1\frac{1}{2}$ cents. Allowing that amount for dumping in connection with trimming we find that a reasonable charge for trimming so-called self-trimming vessels of the type operated by complainant should not exceed 3 cents per ton.

Between April 1, 1909, and February 1, 1910, complainant received 40,290 tons of coal over the piers of the Virginian Railway, for the trimming of which it paid charges at the rate of $3\frac{1}{2}$ cents per ton. This charge appears to have been erroneously applied under a misinterpretation of the schedule posted at the port. On this tonnage we find complainant is entitled to reparation at the rate of one-half cent per ton, or \$201.45, with interest from February 1, 1910. Between November 1, 1910, and February 1, 1911, complainant received over the piers of the defendant Virginian Railway 21,458 tons of coal, for the trimming of which it paid charges at a rate of $4\frac{1}{2}$ cents per ton. On this tonnage we find complainant is entitled to reparation at the rate of $1\frac{1}{2}$ cents per ton, or \$321.87, with interest from February 1, 1911.

None of defendants has filed tariffs with this Commission containing its trimming and dumping charges. Such tariffs should be immediately issued and filed as required by law.

An order in accordance with the foregoing will be issued.

22 I. C. C. Rep.

No. 4087.

WILLMAN & COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted June 29, 1911. Decided January 8, 1912.

A rate of 18 cents for the transportation of watermelons from Blodgett, Mo., to St. Joseph, Mo., via an interstate route, not found to have been unreasonable. Complaint dismissed.

O. M. Rogers for complainant.

H. J. Campbell for St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION.

The complainant, a copartnership engaged in the purchase and sale of fruit at St. Joseph, Mo., by petition, filed April 21, 1911, alleges that an unreasonable rate was charged it by defendants for the transports via an interst tion is asked.

The shipme respectively, v instructions, a St. Louis, Mo Southern Rai Kansas City, were paid in t contends that Burlington & line to St. Joe under a Misso this basis repe

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especially so when the rates are acquiesced in by the carriers; it is our information, however, that the carriers are now contesting in court the validity of the Missouri statute in question. In a recent case involving other state rates established under this same statute the Commission refused to regard the state rate from Blodgett to St. Louis as a reasonable factor for use in constructing interstate rates to points in Minnesota and adjacent states. *Gamble-Robinson Commission Co. v. St. L., I. M. & S. Ry. Co.*, 22 I. C. C. Rep., 138. The defendants deny that the interstate rate of 18 cents was unreasonable or in any way in violation of the act to regulate commerce. The distance via route of movement is 518 miles, and the rate yields revenue of 6.9 mills per ton per mile, which we do not find to have been unreasonable. No specific routing instructions having been given, the defendants' duty under the act to regulate commerce was limited to forwarding the shipment via the cheapest available interstate route. The reasonableness of the joint rate charged for transportation is not questioned on any other ground than that it exceeded the state rate referred to, which applied via another route. Upon the record we are of the opinion that the rate complained of has not been shown to have been unreasonable. The complaint will be dismissed.

22 I. C. C. Rep.

No. 3405.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE
OF KANSAS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted January 12, 1912. Decided February 5, 1912.

1. Rates on salt from the Kansas field to points between the Mississippi and the Missouri rivers found not to be unreasonable in and of themselves. Considering the whole situation, they are, perhaps, sufficiently high but can not be pronounced excessive.
2. These rates are not found to be unduly high in comparison with corresponding rates from the Michigan field to the same points.
3. The Wabash Railroad Company will be required to cease and desist from the discrimination now arising out of the maintenance from Detroit to St. Louis of the 9-cent rate upon bulk salt.
4. Applications for relief from the operation of the fourth section in regard to these salt rates set down for further investigation.

John Marshall, John S. Dawson, John T. White, and E. H. Hogue-land for complainant.

A. E. Helm for Hutchinson, Kans., Salt Company, and others, interveners.

Walter E. McCornack for Detroit Salt Company, Diamond Crystal Salt Company, and others, interveners.

W. F. Dickinson and Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company.

N. S. Brown, W. C. Maxwell, W. H. Wylie, and H. E. Watts for Wabash Railroad Company.

A. A. Hurd, T. J. Norton, and J. R. Koontz for Atchison, Topeka & Santa Fe Railway Company.

Martin L. Clardy, H. G. Herbel, James C. Jeffery, Herbert J. Campbell, and B. M. Flippin for Missouri Pacific Railway Company.

C. C. Wright for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

Hale Holden and George H. Crosby for Chicago, Burlington & Quincy Railroad Company.

F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

J. W. Allen for Missouri, Kansas & Texas Railway Company.

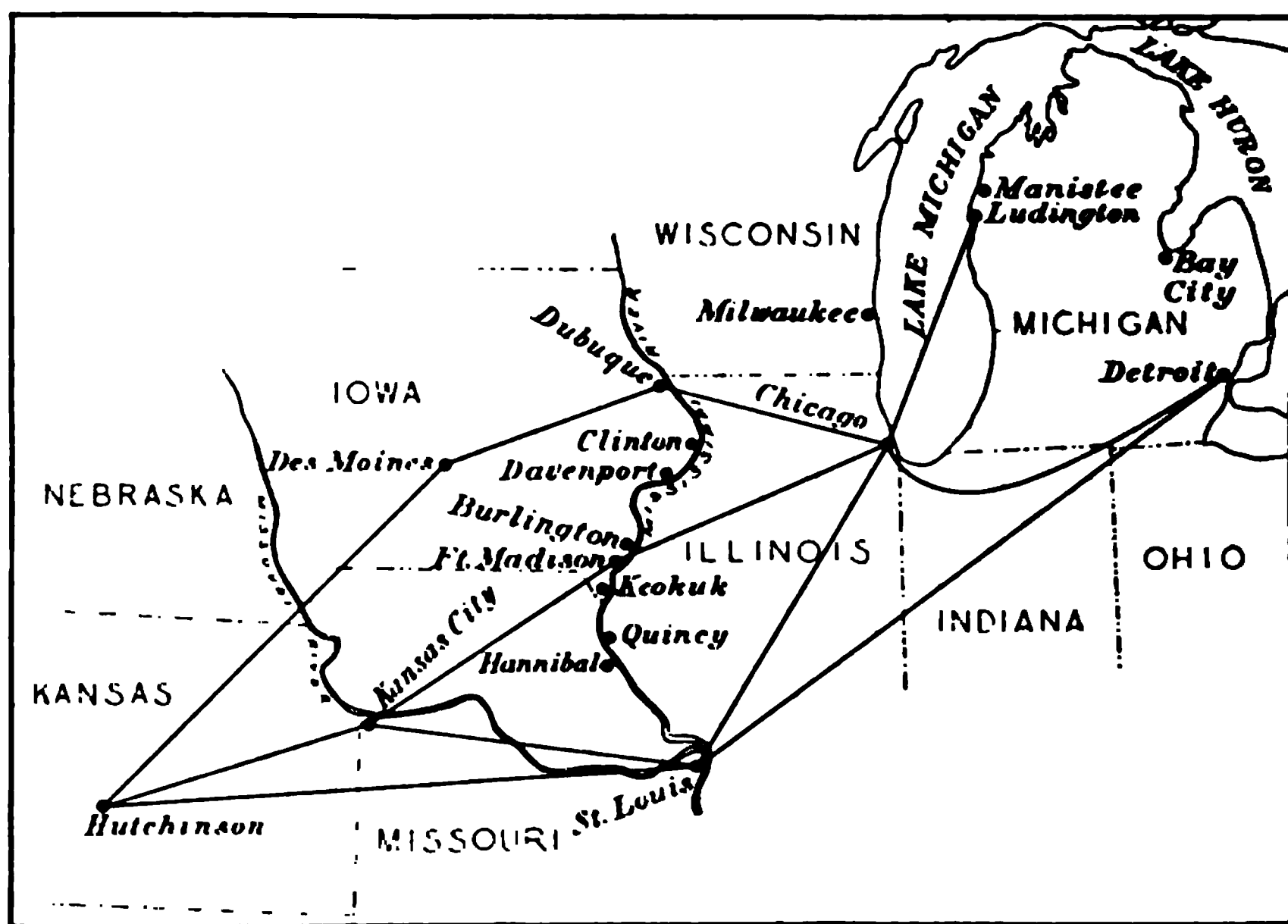
Fred H. Wood and *F. C. Dumbleck* for St. Louis & San Francisco Railroad Company.

F. C. Dillard, *H. A. Scandrett*, *B. W. Scandrett*, and *H. G. Kail* for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

This proceeding involves the relative distributive rates on salt from the Kansas as compared with the Michigan field into intermediate



territory. The situation will be best understood by a glance at the accompanying map.

The Kansas salt field extends about 120 miles north and south by some 60 miles east and west. Hutchinson is situated near the center of this field and may be selected as typical of the whole field. Rates from all points of production in this field to the disputed territory are the same, there being therefore no competition in the rate between different points of production in this field.

The Michigan field covers nearly the entire lower peninsula of the state of Michigan, extensive salt works being located at Ludington, Manistee, Bay City, Port Huron, Detroit, Saginaw, and some other points. This field is therefore more extensive than the Kansas

field. Rates at the present time are substantially the same from all points in the Michigan field to the destinations in controversy; but, owing to conditions of transportation, which will be later referred to, there has been in the past active competition in rates between the Michigan points of production themselves, which has produced, at times, differences in those rates, some vestiges of which still remain.

It will be seen by reference to the map that as salt moves from the Kansas field east and northeast it meets salt moving from the Michigan field in the opposite direction, the debatable ground being, roughly speaking, between the Mississippi and the Missouri rivers. The cost of producing salt in Kansas and Michigan is substantially the same. The quality of the salt is about the same, although this record indicates that at the same price the Michigan salt sells somewhat more freely. Whether, therefore, this intermediate territory shall be supplied from Kansas or Michigan depends mainly upon the rate of transportation.

This proceeding is instituted by the Kansas railroad commission in the interest of the salt producers of that state, and the complaint is:

1. That the rates from the Kansas field into this disputed territory are unreasonable in and of themselves.

2. That these rates are unduly high in comparison with corresponding rates from the Michigan field.

Certain salt producers in Kansas have intervened in favor of the prayer of the complaint, and certain producers in the Michigan field against it, so that the whole situation is before us.

In support of its contentions the complainant relies first and largely upon the fact that under the present rates Kansas producers are not only unable to increase their production, but can not even maintain that of recent years, while production in the rival Michigan field is increasing; and this phase of the case may be referred to before proceeding to a discussion of the rates themselves.

This record does not show in a very satisfactory way the relative production of these two fields, past and present. When this same matter was before the Commission in 1891 it appeared that production in the Kansas field was about 1,000,000 barrels annually, as compared with 4,000,000 barrels in the Michigan field, while it now appears that in 1909 the corresponding figures were 2,500,000 Kansas, 6,000,000 Michigan. If, therefore, we compare the present with 20 years ago the percentage of development has been in favor of Kansas.

It is said, however, that in 1891 the Kansas field was in its infancy, and this record indicates that for the last few years there has been little increase in the Kansas field, while Michigan production has

shown a substantial advance. It is suggested that this is due, not to any undue advantage which Michigan enjoys into this territory, but rather to the fact that other sources of production have been developed to the south and west of Kansas, which have limited its market in those directions.

This Commission has often said that it can not require of carriers the establishment of rates which will guarantee to a shipper the profitable conduct of his business. The railway may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it; nor, conversely, can the shipper demand that an unreasonably low charge shall be accorded him simply because the profits of his business have shrunk to a point where they are no longer sufficient.

The effect of a rate upon commercial conditions, whether an industry can exist under particular rates or a particular adjustment of rates, are matters of consequence, and facts tending to show these circumstances and conditions are always pertinent. But they are only a single factor in determining the fundamental question. A narrowing market, increased cost of production, overproduction, and many other considerations may render an industry unprofitable, without showing the freight rate to be unreasonable.

A reduction in the rate on salt from the Kansas field to these points in controversy would not increase to any appreciable extent the total amount of salt consumed, but a reduction from the Kansas field with no corresponding change from the Michigan field would throw the business to the complaining interests. The question is not what rate the traffic will bear, for the rate is already sufficiently low to move the traffic to its limit from either Kansas or Michigan, but is rather one of relative adjustment. Kansas shippers have a right to demand of these defendants who serve them rates which are first of all reasonable in and of themselves, and, next, rates which, in so far as these defendants can properly control the situation, are fairly adjusted with respect to these rival fields of production.

The inherent reasonableness of the rates in controversy will be first considered.

The original complaint directed attention especially to the rate from the Kansas field to St. Louis. That rate then was and now is 13½ cents per 100 pounds for a distance of approximately 500 miles. Is this unreasonable *per se*?

Salt is very desirable traffic from a transportation standpoint. It loads heavily, is not liable to loss or damage in transit, can be handled at the convenience of the carrier, and affords a uniform business. Its value is comparatively little, being from \$1.50 to \$2 per ton at the point of production. While not consumed as largely as coal, cement,

brick, and similar commodities, and while therefore the freight rate is not so noticeable, it is an article of universal and necessary consumption. All these considerations call for a low rate of transportation, and have been repeatedly recognized by this Commission. It is also true that the ability of a particular producer to sell in a given market has depended largely upon the cost of transportation, and this in turn has operated to force down rates generally, so that salt rates in this territory, certainly, have been established by the voluntary action of the carriers at a low level. Notwithstanding, however, all these considerations which make for a low charge in the handling of this commodity, we are unable, upon any theory, to hold that a rate which pays only 5 mills per ton-mile is unreasonable in and of itself. While this record shows that lower rates have been maintained in the past under stress of competition and are in some cases being maintained to-day, and while if a carrier maintains a lower rate in favor of one locality it may perhaps be required to accord similar treatment to some other locality, we can not hold that the maintenance of this rate is inherently unreasonable.

The rates established by the state commissions in the two states through which this transportation is mainly conducted are instructive. They can not be given for distances as great as that involved in the St. Louis rate, but for 400 miles they are: Missouri, 15½ cents; Kansas, 15½ cents.

While the attack of the complaint is mainly directed against the St. Louis rate, the intervening petitions put in issue rates from the Kansas field to Mississippi River crossings north of St. Louis, and these should also be referred to.

It will be noted from the map that Hutchinson lies nearly due west of St. Louis. Since the course of the Mississippi River is nearly north and south, it follows that the upper crossings are farther from the Kansas field in an air line than is St. Louis, and although the actual mileage from Hutchinson to some of the more northerly crossings is less than to St. Louis, the average from the entire Kansas field would ordinarily be greater. Having reference to distance, therefore, the rate to the upper crossings might well be somewhat higher than to St. Louis. Those rates are the same to Hannibal and Quincy, 15 cents to Keokuk and Fort Madison, and 18 cents to Burlington, Davenport, Clinton, and Dubuque. The distance from Hutchinson to Dubuque is 610 miles, as compared with 500 to St. Louis.

Considered as a whole, the increase to the upper crossings where it occurs seems to be fairly justified by an increase in distance over St. Louis, and we hold, with respect to all these Mississippi River rates, that they are not unreasonable *per se*. Considering the whole situation, they are perhaps sufficiently high, but can not be pronounced excessive.

This proceeding also puts in issue rates at interior points in Iowa and Missouri, and these rates are sometimes slightly higher than those to the Mississippi River, although the distance is somewhat less.

While the reasonableness of rates from the Kansas field to points west of the Mississippi River is put in issue, but little, if any, attention was directed to those rates. They are in many cases blanket rates, the same from both the Kansas and the Michigan fields, so that the same rate applies through a considerable variation in distance. It is quite probable that some of these rates might upon detailed examination be found excessive, but there is nothing in this record upon which we can base an intelligent opinion, nor do we feel called upon at this time to examine the rate from the Kansas field to each one of these numerous points. Without prejudice to the right to find upon fuller investigation that some of these charges may be excessive, we do not at this time find that the charge of unreasonableness is sustained in any of the cases covered by this complaint.

While the Kansas interests have alleged that these rates to the Mississippi River from the Kansas field are excessive and have insisted upon that claim, it is evident that this is not the real objective point. The Kansas producer is interested not in the absolute rate from his field to this intermediate territory, but in the relative rate made from his plant as compared with that from the plant of his Michigan competitor. As already suggested, a few cents more or less in the rate from the Kansas field does not increase or diminish the total amount of salt consumed, but it may absolutely determine whether that salt shall be produced in Kansas or in Michigan. The real purpose of this proceeding is to secure a readjustment of rates between these competing fields.

At the date when this complaint was filed rates upon package salt from Detroit to St. Louis were, for local consumption, 11½ cents; when for beyond, 8½ cents. There was also a rate on bulk salt of 7½ cents. The distance from Detroit to St. Louis is almost exactly the same as from Hutchinson, from which the lowest available rate was 13½ cents; and the Kansas producer insisted that if these rates were maintained from Detroit, then the rate from the Kansas field was too high and should be reduced. The St. Louis rate was made the principal point of attack, and we may properly inquire whether the rates in effect to this market from Detroit and from the Kansas field discriminate in favor of Detroit.

Since the filing of the complaint, rates from Detroit have been advanced and now are upon package salt 11½ cents local, 10 cents proportional; upon bulk salt 9 cents. Our discussion will be addressed to the present rates.

The defendants urge at the outset that whether the adjustment be proper or improper undue discrimination can not be affirmed, for the reason that the carriers which make the rate from the Kansas field are not the same as those which make that from Detroit. It is well understood that if the same carrier serving both Kansas and Detroit names a lower rate for substantially the same distance from Detroit than from Kansas, it must be prepared to justify that discrimination, but if carrier A serves St. Louis from the Kansas field, while carrier B serves that market from the Detroit field, then carrier A is not guilty of discrimination because it declines to meet the rate established by carrier B.

The answer of the complainants to this claim of the defendants is that the Wabash Railroad, which is the short line from Detroit to St. Louis, and which names the low rate between those points, also extends from Kansas City to St. Louis and joins in the rates from the Kansas field to the same market. They point to the previous decisions of this Commission in which we have held that a carrier which is party to a joint rate may be held responsible for that rate and for any discrimination which results from its maintenance.

Two questions would seem to be open to inquiry:

(a) Is the Wabash Railroad justified in naming its present rates from Detroit to St. Louis?

(b) Does that carrier, or can that carrier so control the rate from the Kansas field to St. Louis that it should be held answerable for the discrimination which results from a failure to reduce that rate to correspond with the Detroit rate?

It will be seen upon a reference to the map that the salt-producing points of Michigan are located mainly upon the water. They are, upon the western side of the peninsula, Manistee and Ludington upon Lake Michigan, and upon the eastern side, Bay City, Port Huron, Wyandotte, and Detroit upon Lake Huron. It was said in testimony that salt was produced in Michigan, in quantities, at but a single interior point, Saginaw, which lies in close proximity to the water.

The distance from Ludington and Manistee to Milwaukee and Chicago is from 100 to 150 miles. It appears from this record that salt has for many years been transported from these points of production by water to both Milwaukee and Chicago. Much of this transportation is in boats owned by the producers of the salt; but there is to-day, and for some time has been, a regular tariff of the Pere Marquette steamers naming a rate of 2½ cents from both these producing points to Milwaukee and Chicago.

While it does not appear under what circumstances salt is carried from ports upon Lake Huron to Chicago and Milwaukee nor the cost of the transportation, it does appear that the salt produced at these

Lake Huron ports moves mainly by water. The testimony shows that 80 per cent of all the salt manufactured in Michigan starts upon its journey by water, and it was said that 90 per cent of the salt going into this contested territory moved by lake and rail.

It can not, therefore be doubted and must be assumed, that this Michigan salt can be laid down in Chicago or Milwaukee for 2½ cents per 100 pounds. The cost of reaching any particular point of consumption can not exceed the rate from these two railroad centers plus 2½ cents for the water carriage.

The distance from Chicago to St. Louis by the short line is 278 miles. Several different lines of railway connect these great commercial centers, and competition for business by these different routes is, and always has been, most active. It appears that the rate on salt from Chicago to East St. Louis was for a long time 6½ cents per 100 pounds. The local rate on package salt is now 9 cents per 100 pounds, the rate on bulk salt the same.

Detroit is within the Michigan field. The quality of the salt produced at that point and the cost of production are substantially the same as at other points. The price at which that salt is sold can not exceed that obtained for salt produced at other Michigan plants. If Detroit salt is to find a market in St. Louis or upon the Mississippi River it must move there at no higher cost of transportation than obtains from other Michigan producing points.

The Wabash Railroad has upon its rails at Detroit extensive salt works. If it is to move any part of the product of that factory to St. Louis or other Mississippi River points it must make a rate fairly commensurate with that from the plants of its competitors, and this is precisely what the Wabash Railroad has attempted to do in the past and is attempting to do to-day. It insists that just as the Kansas field is treated as an entirety in the naming of rates, so shall the Michigan field be treated, and that Detroit is a part of that field.

The cost of transporting salt from Ludington or Manistee to Chicago is 2½ cents per 100 pounds; from Chicago to St. Louis, 9 cents per 100 pounds, making a total cost of 11½ cents. The present rate from Detroit is 11½ cents. It is difficult to see how the Wabash road can maintain a higher rate from Detroit than it now does in view of the competition which it meets from the Michigan field by other lines of transportation. Nor can it be said that the present rate from Chicago is an unnatural or an abnormal one. That rate, considering the general level of rates obtaining in the respective territories, is not much if any lower than the present rates from the Kansas field to Kansas City—not as low as the 13½-cent rate from that field to St. Louis.

Should the Wabash Railroad, under the circumstances of this case, be required to insist upon the maintenance of as low a rate from Hutchinson to St. Louis as it maintains from Detroit to St. Louis?

It may be questioned, to begin with, whether there is to-day any unreasonable disparity in the rates on package salt, which are 11½ cents from Detroit as against 13½ cents from Hutchinson.

While the rate from Detroit is less, although the distance is the same, it must be remembered that the general level of rates in the territory east of St. Louis is much lower than that in territory to the west. Indeed, this difference greatly exceeds the difference between these rates. For example, the first class rate from Hutchinson to St. Louis is \$1.19½, while that from Detroit is 46 cents. In official classification salt is classified as sixth class, and the sixth class rate from Detroit to St. Louis is 14 cents. That commodity is not rated in the western classification, but the lowest rate named from Hutchinson to St. Louis upon any class is 22 cents.

It has been recently held in *Sunflower Glass Co. v. A., T. & S. F. Ry. Co.*, 22 I. C. C. Rep., 391, that this difference in transportation conditions may justify a lower commodity rate, mile for mile, east than west of the Mississippi River. On the whole, we are inclined to the opinion that the difference between these rates on package salt from the east and from the west is no greater than it ought to be under all the circumstances.

The proportional rate of 10 cents applies upon traffic destined for points beyond St. Louis. This Commission has in several instances held that a proportional rate applying to through traffic might well be lower than the corresponding local rate, and we do not find in this instance any undue disparity.

The rate of 9 cents upon bulk salt is the same as that from Chicago and is not therefore justified by competitive conditions. This rate gives to Detroit a distinct advantage over other points in the Michigan field and over the Kansas field, to which it is not entitled. In our opinion, a corresponding rate from the Kansas field of 11 cents, with a minimum of 60,000 pounds, would be relatively fair, and such a rate would afford better business for the carriers than the present package rate, minimum 37,500 pounds.

Our conclusion is that in the main rates from Detroit to St. Louis do not unduly discriminate against the Kansas producer, but assuming that they do, can the Wabash Railroad be properly required to correct that discrimination? We do not think that it should be, for the reason that this carrier does not bear such a relation to the rates from Hutchinson to St. Louis that it should be properly held responsible for whatever discrimination may exist in the present relation.

The Wabash takes up this traffic at Kansas City. It can only engage in the transportation from the Kansas field in connection

with some line operating to Kansas City from the west. Were the Wabash disposed to reduce the rate from the Kansas field to St. Louis it could only do so by sacrificing its own revenue from Kansas City to St. Louis to a sufficient extent to bring about the desired readjustment. The present rate to the Missouri River from the Kansas field is 10 cents, and the Wabash must, therefore, if it establishes a rate of $11\frac{1}{2}$ cents to St. Louis, accept for its transportation service from Kansas City $1\frac{1}{2}$ cents per 100 pounds.

The distance from Kansas City and Chicago, respectively, to St. Louis is almost exactly the same. The cost of bringing salt from the Kansas field to Kansas City is 10 cents per 100 pounds; the cost of bringing salt from the Michigan field to Chicago is $2\frac{1}{2}$ cents per 100 pounds. How, in this posture, can the Wabash Railroad, extending from both Chicago and Kansas City to St. Louis, be required to maintain from Chicago and Kansas City such rates as will make the through rate from the point of production the same? To do this that carrier must name a rate from Kansas City which is $7\frac{1}{2}$ cents per 100 pounds less than from Chicago, although upon every consideration the Chicago rate should be the lower.

There is, in our opinion, undue discrimination upon the part of the Wabash Railroad in maintaining the present rate of 9 cents upon bulk salt. That rate, which is the same as the present rate from Chicago, is not forced by legitimate competition upon the carrier, and the Wabash Railroad should either join in establishing a corresponding rate from the Kansas field or should advance its rate from Detroit.

As to all other rates there is no undue discrimination, and if there were the Wabash could hardly be called upon to remove the same, since, except as to this bulk-salt rate, it simply accepts a situation which it can not control. There is no similarity between this case and that presented in *Railroad Commission of Tenn. v. A. A. R. R. Co.*, 17 I. C. C. Rep., 418, for there the lines beyond the Ohio River absolutely dominated the situation, and the discrimination could not exist except by their voluntary action.

It has already been noted that the average distance from the Kansas field to the upper Mississippi River crossings is greater than to St. Louis. Upon the other hand, the distance from the Michigan field grows less as we proceed north from St. Louis. If the Kansas field is not entitled to meet the Michigan field upon an equality of rate at St. Louis, it is still less entitled to do so at Mississippi River points north of St. Louis. For example, the distance from Hutchinson to Dubuque, the most northerly of these crossings in controversy, is 610 miles, while the distance from Chicago is but 172 miles. Rates from the Kansas field increase, as has been already noted, from $13\frac{1}{4}$ cents at

St. Louis to 18 cents at Dubuque. Rates from the Michigan field are 13½ cents to all Mississippi River crossings north of St. Louis. Manifestly, if there is no undue discrimination at St. Louis none exists at the more northerly crossings.

This complaint also puts in issue the justice of the present adjustment with respect to a great number of points west of the Mississippi River, mostly in the states of Iowa and Missouri.

The competitive situation embraced in the present proceeding was presented to the Commission in *Anthony Salt Co. v. M. P. Ry. Co.*, 5 I. C. C. Rep., 299, the Kansas shippers being in that case, as at the present time, the complainants. It is impossible to tell from the report of that case exactly what the relation of rates complained of then was, but, clearly, it was much more favorable to Michigan than the present adjustment. The case shows, for example, that the rate from the Kansas field to St. Louis was 24½ cents, while the rate from the Michigan field at that time was 10½ cents. It seems fairly inferable from the statement of facts that under the then existing rates the Michigan producer met the Kansas producer upon a substantial equality at the Missouri River and had an advantage in the rate with respect to most territory east of that river.

While that complaint was dismissed, the controversy continued. Carriers serving the Kansas field were defendants to that proceeding and resisted the application of the complainants, but none the less it was and is manifestly in their interest to supply this territory between the Mississippi and Missouri rivers from Kansas. Kansas producers continued to insist upon a better rate, and rates were gradually reduced at all points. At St. Louis the cut was from 24½ cents to 13½ cents, at Fort Madison from 24½ cents to 15 cents. There were also advances from Michigan. The whole situation was a most troublesome one, leading to many disputes and to many unfortunate rate situations from the standpoint of the carriers. Frequent conferences were held, until finally the matter was laid at rest by the present adjustment.

This case does not clearly show the exact theory upon which that adjustment has been worked out, nor does there seem to have been any exact theory. Probably, in view of the conflicting interests and the great number of carriers involved, it would be impossible to apply any uniform rule. Generally stated, rates from Michigan in all cases are less to the Mississippi River, as, in our opinion, they properly should be. Soon after crossing that river a point is reached where the rate from Michigan and from Kansas becomes the same, and this relation is continued west, producing a blanket of considerable extent, beyond which the rate is in favor of Kansas.

We have examined a great number of these intermediate points. As must be the case with every blanket, instances are found upon

the edges where the present adjustment is not altogether in accordance with the relative distances and is not probably the adjustment which would be established if that point alone were under consideration. In the very nature of things it would be almost impossible for us to look into each instance, nor have we attempted to do so. The matter has been long the subject of controversy; the settlement seems to have been honestly made, and without undertaking to approve the adjustment in detail and without expressing an opinion which would prevent a further examination of particular instances which may be called to our attention, we fail to find, on the whole, that this adjustment unduly discriminates against the interests of Kansas, which are represented by the complainants.

(On the whole, we are satisfied that the present rates of freight are as favorable to the Kansas field as, all things considered, they should be, except that a rate applicable to the transportation of bulk salt from the Kansas field to St. Louis should be named to correspond with that established from Detroit.

The Wabash Railroad Company will be required to cease and desist from the discrimination now arising out of the maintenance from Detroit to St. Louis of the 9-cent rate upon bulk salt. Otherwise the complaint will be dismissed.

FOURTH SECTION APPLICATIONS.

It has been already noted that rates from the Kansas field to some points west of the Mississippi River are slightly higher than those at the river crossings, and it therefore results that in some instances there is a violation of the fourth section. This is referred to in the complaint and the intervening petitions.

The case was originally heard in the fall of 1910, but was not argued or disposed of at that time for the reason that the parties indicated a desire to make certain rate changes which it was thought might remove the cause of complaint. In fact, the rates from Detroit to St. Louis were advanced, as already indicated, but this was not sufficient to satisfy the complainants, and the case was accordingly set down for further hearing in November, 1911.

No reference was made upon the first hearing to the violations of the fourth section. It was the purpose of the Commission to set down for investigation upon the same date with the last hearing the applications which had been filed by the defendants to this proceeding for leave to maintain the higher intermediate charge, but through error, only the Wabash Railroad Company was notified.

Upon the hearing the examiner called attention to the fact that the fourth-section applications of the defendants should have been assigned and the defendants were given an opportunity to introduce any testimony upon that point which they desired. Some of them

availed themselves of this opportunity, and the subject is referred to in more or less detail in all the briefs which have been filed and was to some extent discussed upon the argument. It was, however, said by counsel for one or more of the defendants upon the argument that this matter ought not to be disposed of upon the present record, for the reason that other carriers not defendants to this proceeding were interested in these rates.

So far as appears the question presented under these fourth-section applications is an extremely simple one. Lines leading from Kansas in meeting competition upon the Mississippi River have made rates which they allege to be abnormally low, and for this reason they ask to maintain at intermediate points higher rates, which, they say, are reasonable. We have found that there is active competition upon the Mississippi River between these two salt fields and that the rates from both directions, especially from the Kansas field to these various Mississippi River crossings, are low, but we have not found, nor do we find, that they are so unreasonably low as to justify the charging of a higher rate at intermediate points.

Neither do we find that the competitive conditions which are alleged to justify the higher intermediate rates do, under all the circumstances of this case, afford such valid justification. Nor yet, while declining to condemn as unreasonable the intermediate rates, have we given to those rates such examination that we can pronounce them reasonable at this time.

Before we allow these defendants to depart from the mandate of the statute as expressed in the present fourth section we must be satisfied that the more distant rates are unduly low and that the departure from the fourth section is warranted by competitive conditions at the more distant point which do not exist at the intermediate point. In this case we fail to find that the long-distance rates are unreasonably low, and apparently the competition at the more distant point is of exactly the same sort as at the intermediate point.

If, therefore, these applications stood for disposition, we should deny the right to maintain the higher intermediate rates. So far as we can see, the facts are fully before the Commission, and nothing would be gained by another hearing; but if these defendants, or any of them, conceive that a further investigation should be held they may file with this Commission, on or before the 15th day of March, a statement asking for such further investigation and giving, briefly, the reasons why the present investigation has not been sufficient. If upon considering these statements ground for further investigation appears, the applications will be set down for hearing. Otherwise orders will be entered denying the applications as to these rates on salt, effective as of May 1, 1912.

No. 3872.

FRED R. KLEIBACKER

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted October 14, 1911. Decided February 5, 1912.

Upon complaint of alleged unreasonableness of rule 15 of official classification;
Held, That the present record, involving merely a claim for reparation on a specific shipment, is insufficient to base a finding as to the reasonableness of a rule of such widespread application and importance.

Fred R. Kleibacker for complainant in person.

J. T. Johnston for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint challenges the reasonableness of rule 15 of official classification, which provides that—

No single shipment or small lot of freight of one class will be taken at less than 100 pounds, at first class rate; and in no case will the charge for a single consignment be less than 25 cents.

The issue arises upon a petition involving one shipment of canned okra from New Orleans, La., to Pittsburgh, Pa., the shipment weighing 45 pounds. The Louisville & Nashville tariff applicable to the movement, and which is governed by the official classification, names a through rate of 60 cents on canned goods in less than carloads, which is 20 per cent less than third class. Under authority of the rule quoted the total charge was increased to \$1.10. The rule is alleged to be unreasonable in so far as its operation results in a higher charge than the less-than-carload rate applicable to the class in which the commodity is rated—in this case 60 cents.

Under the present rule the less-than-carload rate would not apply to less-than-carload shipments of canned goods under 183 pounds in weight, at which point the charges at the less-than-carload rate would exceed the \$1.10 minimum charge. As the higher classes are reached this spread is reduced; thus, on second class traffic at 98 cents the minimum charge would be exceeded on all shipments over 112 pounds

in weight. Therefore, the lower the class of freight the greater the disparity between the minimum charge and the less-than-carload rate at actual weight.

The order asked for would be more far reaching in its effects than the interests of the present record, affecting, as it would, every carrier in official classification territory. No opportunity has been afforded the other carriers to be heard nor have we the testimony of shippers as to the general effect of the provision and their attitude thereon. A broader investigation than one of reparation against two carriers on a single shipment is necessary to a just and safe determination of the reasonableness of this provision. The present record does not afford an adequate basis upon which to deal with the matter presented as one of classification, and as there is no evidence as to the inherent reasonableness of the rate charged on the particular shipment which, it may be stated, involved a two-line haul of some 1,100 miles, the complaint will be dismissed.

No. 4372.
SOUTHWESTERN MISSOURI MILLERS' CLUB
v.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
ET AL.

Submitted January 12, 1912. Decided February 5, 1912.

1. Present rates for the transportation of wheat and wheat products and corn and corn products from the Joplin group to Little Rock territory found to be unreasonable in themselves and in comparison with similar rates from southern Illinois and from the northern part of the Kansas City group, and lower rates prescribed for the future.
2. Present rates on said commodities from the Joplin group to Alexandria territory found to be unreasonable, and lower rates prescribed for the future.
3. The Commission does not find any sufficient cause for revising the rates on these commodities in this proceeding from the Joplin territory to Fort Smith.
4. An examination of the situation rather inclines the Commission to the opinion that it would be better to create a territorial group for these commodities out of the Kansas City group to both Little Rock and Alexandria rather than a system of graded rates, but it seems proper that the carriers should be allowed to deal with this situation as they prefer, provided they substantially meet the views of the Commission.
5. Reparation denied.

Sidney F. Andrews for complainants.

Lyman R. Bowman for Scott County Milling Company.

T. J. Johns for Charleston Milling Company.

J. B. Mugee for Board of Trade of Cairo.

J. C. Lincoln for Merchants' Exchange of St. Louis.

J. W. Allen for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

H. G. Herbel and *C. E. Perkins* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

Fred H. Wood for Frisco Lines

T. J. Norton and *J. J. Coleman* for Atchison, Topeka & Santa Fe Railway Company.

Roy F. Britton and *J. D. Watson* for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

I. W. Moore, F. H. Moore, and *J. R. Mills* for Kansas City Southern Railway Company.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

What is known in the naming of grain rates to the south as the Kansas City group extends from the Arkansas-Missouri state line north something over 250 miles. Its greatest width is about 200 miles. It lies, for the most part, in the state of Missouri, but includes a portion of eastern Kansas and of northeastern Oklahoma.

The complainants are millers, located in the southwestern part of this territory. The area covered by their operations is about 100 miles north and south by something over that figure east and west. This territory has been designated in these proceedings as the Joplin group.

The Little Rock group and the Alexandria group are territories south of the Kansas City group, Little Rock and Alexandria being the most important points in these respective divisions.

The complainants allege:

1. That rates on wheat and wheat products and corn and corn products from the Joplin group to Little Rock and Alexandria territories are unjust and unreasonable *per se*.

2. That rates from Joplin territory to Little Rock and Alexandria discriminate against that territory in favor of the balance of the Kansas City group.

3. That rates from the Joplin territory are unduly high as compared with those from competing mills in southern Illinois.

4. There is a further claim that rates from the Joplin territory to Fort Smith, Ark., are unreasonable.

The Joplin territory produced in the year 1910, 15,000,000 bushels of wheat and 75,000,000 bushels of corn. The mills of the complainants obtain about 90 per cent of their wheat in Joplin territory. This wheat is what is known as "soft" wheat, which is the only kind of wheat ground by the complainants and which produces a kind of flour which is most in demand in Little Rock and Alexandria territories.

The average distance from the complainants' mills to Little Rock is about 350 miles, the nearest mill being distant about 300 miles.

The average distance from the entire Kansas City group to Little Rock is approximately 450 miles.

Southern Illinois produces the same kind of wheat which is grown in the Joplin territory, and the mills of southern Illinois grind this wheat into flour, which competes in the Little Rock and Alexandria territories with that of the complainants.

Rates on wheat and wheat products to Little Rock may be first considered.

There are now in effect from the Kansas City group to Little Rock the following rates, which are open to the complainants in the conduct of their business.

(a) The local rate from all points in this group to Little Rock and Little Rock territory is 23 cents per 100 pounds. This rate applies on wheat or flour from the point of origin.

(b) There is a so-called proportional rate of 18 cents per 100 pounds applying on wheat and its products which has moved by rail into the point of shipment. Under this rate the complainants may ship in by rail to their mills from any direction and obtain upon the product this flat rate of 18 cents.

(c) Milling in transit is permitted upon a direct-line haul without extra charge, so that the miller within the Joplin territory can purchase wheat at any point in the Kansas City group, mill it in transit if he be located upon the direct line, and send on the product to Little Rock at a total rate of 23 cents.

The complainants attack the reasonableness of this local rate, which they assert ought not to exceed 18 cents.

The defendants justify their rate of 23 cents from the mills of the complainants to Little Rock by showing that the average distance from the Kansas City group is 450 miles and urging that a rate of 23 cents for this distance is not unreasonable. To this the complainants make answer that they are not interested in the rate from the Kansas City group, but only in that from the Joplin territory; that the average distance from this territory is but 350 miles, and that for this distance 23 cents is too high. In other words, the contention of the complainants is that the Kansas City group is too large and that to compel them to pay a rate which might properly be applied to the entire group is unjust and unreasonable.

This Commission has often considered the propriety of group rates, having sometimes approved and sometimes disapproved of existing groups. Its action has often been influenced by the fact that existing groupings were highly satisfactory both to shippers and to carriers. We have always recognized that in the application of group rates a discrimination of necessity arose between the near and

the far edge of the group; but have felt that in many cases this discrimination was not undue and therefore not unlawful. We have never approved a group rate which imposed upon any part of the group an unjust and unreasonable or unduly discriminating transportation charge, when that consideration was urged upon the attention of the Commission. We must therefore inquire at the outset whether, in naming rates to Little Rock territory, Joplin territory may properly be embraced in the Kansas City group.

From the nearest mills of the complainants to Little Rock the distance is about 300 miles. From the most distant points in the Kansas City group the distance is over 550 miles. The principal grain-shipping points—Kansas City, St. Joseph, Leavenworth—are situated in the northern part of this group.

The mills of the complainants grind the grain which is produced within this territory, and they draw practically their entire supply of wheat from the Joplin territory. The defendants urge that under the milling-in-transit privilege the complainants may buy their supply of grain at any point in Kansas City territory, stopping it off for milling without additional charge, and that therefore the entire group rate is available to these complainants. But while this is true in theory, as applied to the actual operation of these Joplin mills it has no application, since they do not and can not purchase their grain at other points in the Kansas City group. They urge that extravagant rates ought not to be imposed upon the 90 per cent of grain which is grown in this territory upon the pretext that a more favorable rate is granted to the other 10 per cent; that the products of their territory ought to be carried for a reasonable charge into those consuming territories for which they are particularly adapted and to which they are the nearest.

It seems to us that this territory, under the circumstances of this case, may well say that it is entitled to a reasonable rate into Little Rock and Alexandria territory without reference to the rate from the balance of the group, and we must therefore consider whether a rate of 23 cents is unjust and unreasonable as applied to this territory alone.

The average distance to Little Rock from Joplin territory has already been stated to be about 350 miles. The rate of 23 cents applies not only to Little Rock but to other points in that territory, but the evidence shows that the rate to Little Rock itself is the important one, and, considering the territory as a whole, the average distance would be less than 350 miles.

Examining rates established by state authority in wheat-producing states, we find the following for 350 miles:

State.	Rate per 100 pounds.	State.	Rate per 100 pounds.
	Cents.		Cents.
Iowa	14.9	Arkansas (the so-called court tariff) ...	20
Nebraska	17.85	Missouri	17
Minnesota	21.5	Oklahoma	15
Wisconsin	21.3		
Kansas	14.5	Average	17.45
Texas	15		

If these rates are to be taken as the fair measure of a reasonable rate, 23 cents would be too high.

The short line from Kansas City to Fort Smith is 328 miles via the Kansas City Southern, and this line would form a part of the through line from Kansas City and points in Joplin territory to Little Rock. The rate voluntarily established for this distance is 19 cents, which would indicate that 23 cents for 350 miles was somewhat excessive.

The defendants refer to *Mitchell v. A., T. & S. F. Ry. Co.*, 12 I. C. C. Rep., 324, and *Farmers, Merchants & Shippers Club of Kans. v. A., T. & S. F. Ry. Co.*, 12 I. C. C. Rep., 351, as cases in which the Commission established rates in the same general territory higher than those under consideration.

The rates mainly under discussion in those two cases were export rates via the port of Galveston. We fixed in the last case an export rate of 25 cents from points in Kansas, between 700 and 750 miles distant from that port, increasing the rate one-half cent for each additional 50 miles.

The state of Texas for the purpose of naming domestic rates had been divided by the carriers into four groups, and both parties requested that these groups and the differentials obtaining between them be left as they were. We fixed to group IV a rate of 35 cents, making the other groups depend upon that, in accordance with certain differentials then existing and which, as just stated, were satisfactory to the complainants. The effect of this, as pointed out by the Commission, was to establish an export rate of 25 cents and a domestic rate of 35 cents to Galveston, which was located in group IV; but we further observed that this rate of 35 cents applied not only to Galveston but to the entire southern part of Texas for several hundred miles east and west, not only over the main line but over branch lines as well, and that it involved the right of stoppage in transit and rebilling at a great number of points in Texas.

In the *Mitchell case, supra*, we were dealing with rates between the lower edge of the producing territory and the upper edge of the consuming territory. The opinion states that the rates are established in

view of this fact, and that they are "extremely high." So far as the rates fixed in these cases are to be taken as an authority the most significance must be attached to the export rate, since in establishing the domestic rates we were largely guided by conditions as we found them and which both parties asked us not to disturb. It should be noted here, however, as was said in the opinion, that the export rate which we approved is lower than a domestic rate for the same distance involving different delivering conditions should be.

It should also be held in mind in disposing of the question before us that rates can seldom be tested, even as to their reasonableness, strictly by themselves, but must be considered, to an extent, in reference to their environment; and this is true of the present instance.

These complainants sell both in Little Rock and in Alexandria in competition with the same kind of flour ground from the same kind of wheat by mills in southern Illinois, and from this territory the present rate is 18 cents. The average distance from these southern Illinois mills is about 31½ miles, about 40 miles less than from the Joplin territory, and the cost of the transportation is somewhat less expensive.

Formerly the rate from southern Illinois was 16 cents, and at that time the Joplin territory enjoyed a rate of 18 cents, the advance since having been 2 cents from Illinois and 5 cents from Joplin territory.

It was said that the complainants, at the present time, enjoyed a proportional rate of 18 cents from their mills in all cases where the grain had been shipped in by rail, that no milling-in-transit privilege was enjoyed by the mills in southern Illinois, which were obliged to pay the local in upon their grain, and that therefore, in effect, the present rates from the two sections were equal. But an examination of the tariffs shows that the St. Louis, Iron Mountain & Southern, the only direct line from that territory, does permit milling in transit at all points upon its line, and that the Chicago & Eastern Illinois grants the same privilege upon the payment of a penalty of ¼ cent per 100 pounds, so that while a part of the mills in southern Illinois may not find access to Little Rock territory upon a total rate of 18 cents, many of them do.

Considering this whole situation, we are of the opinion and find that present rates from the Joplin territory are too high, both of themselves and in comparison with similar rates from southern Illinois and from the northern part of the Kansas City group, and that the rate on wheat and its products from this territory to Little Rock and corresponding territory ought not to exceed 20½ cents per 100 pounds.

The present rate on corn is 19 cents, a differential of 4 cents per 100 pounds. This difference in transportation charge is hardly justified by the conditions of the service, and is greater than is usually

maintained. In the Texas cases above referred to we established a difference of 3 cents in rates greater in amount than this, and we are not disposed to require the observance of a wider difference here. In our opinion the rates on corn and corn products from the Joplin territory to Little Rock and Little Rock territory ought not to exceed $17\frac{1}{2}$ cents.

Alexandria is farther removed from the Kansas City group than Little Rock, and with the increase of distance the effect of the discrimination in group rates becomes less apparent. We feel, however, that under the circumstances of this case the Joplin territory is now paying to Alexandria and corresponding territory as well as to Little Rock rates somewhat too high, both as compared with the Kansas City group as a whole and as compared with rates from southern Illinois. The present rates from the Kansas City group to Alexandria are 30 cents upon wheat and its products and 26 cents upon corn and its products. We are of the opinion that these rates from the Joplin territory ought not to exceed, on the average, $27\frac{1}{2}$ cents and $24\frac{1}{2}$ cents, respectively.

The complaint puts in issue rates from Joplin territory to Fort Smith. These rates are now roughly graded according to distance. While they may be somewhat excessive for the shorter distances and are not altogether consistent with themselves, we do not find any sufficient cause for revising them in this proceeding.

The 23-cent rate from the Kansas City group is made to apply at all points between Fort Smith and Little Rock, while in the reverse direction from Illinois mills a lower rate is in effect through Little Rock. This is a manifest discrimination which should be corrected. Rates from the Joplin group through Fort Smith should build up gradually after leaving that point.

The complainants ask us to establish to both Little Rock and Alexandria a system of graded rates from this Joplin territory. Our examination of the situation rather inclines us to the opinion that the better way would be to create a territorial group, naming from that group the rates above indicated; but it seems proper that the carriers should be allowed to deal with this situation as they prefer, provided they substantially meet the views of the Commission. We shall therefore make no order at this time. If the defendants have not, on or before April 1, filed tariffs carrying out the opinion here expressed, we will then issue an order either defining the territory from which these rates should apply or establishing graded rates, as asked by the complainants.

While we have suggested a reduction in these rates, we do not find that, up to the present time, the rates in effect have been unlawful, and reparation will therefore be denied.

No. 1830.

MARICOPA COUNTY COMMERCIAL CLUB

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted December 29, 1911. Decided February 12, 1912.

Rates on cattle, and sheep single deck and double deck, from Phoenix to Los Angeles via Maricopa and via Parker found to have been unreasonable, and new joint rates prescribed for the future.

F. A. Jones, E. P. Costigan, and E. G. Kuster for complainant.

T. W. Tomlinson for Arizona Wool Growers' Association, Arizona Cattle Growers' Association, and American National Live Stock Association, interveners.

C. W. Durbrow, F. C. Dillard, P. F. Dunne, and H. A. Scandrett for Southern Pacific Company and Arizona Eastern Railroad Company.

W. G. Barnwell, P. P. Hastings, T. J. Norton, and E. W. Camp for Santa Fe, Prescott & Phoenix Railway Company; Arizona & California Railroad Company; and Atchison, Topeka & Santa Fe Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

LANE, *Commissioner*:

In this complaint a large number of commodity rates applying to and from Arizona points were attacked. As to some of these rates we have already announced our finding. As to a large number of others the carriers have filed fourth section applications, thus making further hearing and investigation necessary, and the record as to such rates will therefore be consolidated with the records of these fourth section applications. At this time we shall deal only with the rates on cattle and sheep from Phoenix and vicinity to Los Angeles, via both the Southern Pacific and the Santa Fe lines.

Shipments from Phoenix may go to Los Angeles over the Arizona Eastern (formerly the Maricopa & Phoenix) to Maricopa and thence over the Southern Pacific, a total distance of 446 miles, or over the Santa Fe, Prescott & Phoenix, to Wickenburg, thence via the Parker

cut-off to Cadiz, thence over the Santa Fe main line, a total distance of 491 miles. The rates complained of were made in the first instance by the Southern Pacific lines, but are met by the Santa Fe. They are as follows per 36-foot car:

Cattle, \$126.85; sheep, single deck, \$88.50; sheep, double deck, 170 per cent of single-deck rate.

Complainant, representing the live-stock interests of Maricopa county, sought to show that the above rates from Phoenix and vicinity to Los Angeles were unreasonable. Several witnesses testified that on account of the freight rates California buyers never come to Maricopa county for stock until the supply from all other producing territory is exhausted. Furthermore, much evidence was presented to show that the rates on live stock prevailing generally in Nevada, Idaho, Montana, Oregon, and California were lower than those attacked. It was also alleged that the condition attached to the cattle rate complained of requiring a declared valuation not to exceed \$20 per head was unreasonable, since the limitation of liability generally applying with cattle rates was \$50. Defendants admitted the injustice of the \$20 limitation and declared that when the tariff was revised it was intended to raise the limitation to \$50.

The complainant emphasized especially the following rate relation:

Rates per 36-foot car.

From—	Miles.	Cattle.	Sheep, single deck.
El Paso to Los Angeles.....	414	\$105.00	\$84.00
Phoenix to Los Angeles via Southern Pacific	441	126.85	88.50

The defendants aim to justify the higher rates applying from Phoenix than from El Paso on the ground that the former haul either via the Southern Pacific or the Santa Fe is in part over a branch line on which the cost of operation is high and the tonnage carried is light.

The combination of local rates from Phoenix to Los Angeles via Maricopa is as here shown:

Rates per 36-foot car.

From—	Miles.	Cattle.	Sheep, single deck.
Phoenix to Maricopa	35	\$29.50	\$29.50
Maricopa to Los Angeles.....	405	100.30	80.00
Combination rate Phoenix to Los Angeles via Maricopa	441	129.80	89.50

It will be seen that the cattle rate complained of is slightly lower than a combination rate would be, and the rate on sheep is just equal to the combination rate.

In addition to comparisons of these rates with other rates in the west for about the same distances, it is instructive to note the evolution of these rates since 1895:

From Phoenix to Los Angeles; rates per 36-foot car.

Date effective.	Cattle.	Sheep, single deck.	Sheep, dou- ble deck.
March 5, 1895.....	\$106. 70	\$68. 20	\$85. 25
September 10, 1896.....	106. 70	68. 20	Cancelled.
November 20, 1898.....	118. 25	82. 50	Cancelled.
December 15, 1899.....	118. 25	82. 50	156. 75
May 20, 1900.....	126. 85	88. 50	168. 15
April 22, 1902.....	129. 80	88. 50	168. 15
June 23, 1902.....	126. 85	88. 50	168. 15
December 1, 1905, to present.....	126. 85	88. 50	150. 45

From this it appears that the present rate on cattle is \$20.15; on sheep, single deck, \$20.30; and on sheep, double deck, \$65.20 higher per 36-foot car than in 1895.

The Commission has often recognized that rates over a two-line haul may properly exceed what would be reasonable rates for the same distance and under the same conditions over a one-line haul. But upon consideration of all the facts disclosed by full hearing and investigation, we are convinced that the rates complained of are unreasonable even if allowance be made for the above principle, and we shall prescribe the following joint rates to apply via Maricopa and via Parker on 36-foot cars from Phoenix and points in Maricopa county at present taking the same rate to Los Angeles:

Cattle, declared valuation per head not to exceed \$50, \$95; sheep, single deck, \$65; sheep, double deck, \$110.50.

The defendants in republishing their tariff will be expected to provide in connection therewith for cars of greater or less dimensions a scale of rates graduated in relation to the above rates for 36-foot cars.

An order will be entered accordingly.

No. 3221.
WILLIAM K. NOBLE
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted December 9, 1911. Decided January 8, 1912.

1. In all cases where a carrier by its tariff establishes particular minimums as applicable to cars of given dimensions, it must furnish a car of the size provided for in the tariff and ordered by the shipper; or, in case of its inability to do this, must provide other equipment, under such conditions as to fairly protect the minimum of the car ordered, and its tariff should contain a provision to that effect.
2. It would not be unreasonable for carriers to provide in their tariffs that the minimum applicable to the special car would not be protected unless the carrier had failed for six days, excluding the day of notice, to furnish the car of the size ordered; but this is not intended to relieve carriers from the duty of furnishing equipment within a reasonable time. It simply fixes a definite period beyond which the duty to furnish other equipment in lieu of that ordered shall attach.
3. Prior report herein modified.

R. B. Coapstick for complainant.

W. C. Coleman, W. A. Parker, F. S. Holbrook, and E. P. Bates for defendants.

REPORT OF THE COMMISSION ON REHEARING.

PROUTY, Commissioner:

Supplement No. 61 to tariff I. C. C. No. 6623 of the Baltimore & Ohio Railroad Company provides that certain lumber and forest products shall take a minimum of 30,000 pounds when the car is 36 feet or more in length, and 24,000 pounds when the car is less than 36 feet in length. The complainant, a manufacturer of cooperage stock, desiring to ship a carload of elm hoops, one of the articles covered by the above tariff, applied for a car 33 feet in length. After waiting for six days and receiving no encouragement to hope for the furnishing of a car of the dimension ordered, he accepted and used a car 36 feet long. His shipment weighed 20,100 pounds. He was charged for 30,000 pounds, that being the tariff minimum applicable to the car in which the shipment moved. His contention is that he should have been charged upon 24,000 pounds, that being the minimum for the car which he ordered.

The Commission held that the complainant was entitled to receive a car 33 feet in length; that if the defendant for its convenience, not being able to furnish that car, furnished a car 36 feet in length, the minimum which would have applied to the smaller car should be applied to the larger car. It found that the tariff of the defendant was unreasonable in not containing that provision, and upon this finding it awarded reparation to the complainant and ordered that the defendant incorporate into its tariff a proper rule. 20 I. C. C. Rep., 72.

The Baltimore & Ohio operates in official classification territory. That classification provides that where a car of a certain length is ordered and the longer car is furnished, the minimum applicable to the car ordered will be protected up to a car not exceeding 40 feet 6 inches in length. If, however, the carrier, for its own convenience, furnishes a car more than 40 feet 6 inches in length, and if this car is accepted and used by the shipper, then the minimum applicable to the car actually used must be applied. If the Baltimore & Ohio had complied with the order of the Commission it would have been obliged to abrogate in its tariffs the above provision, and this, it is claimed, would have necessitated similar action upon the part of other carriers operating in competition with the Baltimore & Ohio in official classification territory. For this reason the Baltimore & Ohio filed a petition for rehearing, asking that this phase of the matter, which had not been called specifically to the attention of the Commission upon the first hearing, might be considered. This petition was granted and a further hearing has been had, at which the views of railroads operating in official classification territory upon this subject have been elaborately presented.

The original decision in this case simply enforced the Commission's rule No. 66, and the discussion upon the rehearing was addressed mainly to the point that rule 66 is unreasonable in so far as it requires carriers to protect the minimum when a car exceeding 40 feet 6 inches in length is furnished.

In *General Chemical Co. v. N. & W. Ry. Co.*, 15 I. C. C. Rep., 349, it appeared that the defendants had in effect a tariff covering the shipment of sulphide of iron from points in the state of Virginia to New York, which provided that the minimum weight should be the marked capacity of the car. The complainant ordered a car of 60,000 pounds capacity, but the defendant having no such car available furnished, for its own convenience, a car of 80,000 pounds capacity. The shipment in question actually weighed but 53,550 pounds, and could have been loaded into a car of 60,000 pounds capacity. Freight charges were assessed upon 80,000 pounds, whereas complainant contended that they should have been assessed upon 60,000 pounds.

22 I. C. C. Rep.

The Commission sustained this view, saying:

Assuming, as we do, that the matter has come before us in this form in good faith, we have no hesitation in holding that the complainant is entitled to reparation on the basis of a 60,000-pound shipment. The rate as published amounts in substance to an offer to the shipping public by the three carriers forming the through route and naming the joint through rate to transport sulphide of iron between the points in question in any car of recognized standard dimensions or capacity that the shipper may demand if suitable for the carriage of the commodity that he has ready for shipment. This offer the law requires the carriers from every point of view to make good; and if a car of a particular standard size or capacity is not available upon the reasonable demand of a shipper for a car of that size, it is the duty of the carriers, nevertheless, to accept and carry the shipment in any car or cars that are available for the movement, assessing the charges on the basis of the marked capacity of a car of the dimensions or capacity demanded. It is scarcely necessary to observe that it lies within the power of carriers to protect themselves against unreasonable demands by shippers under such a rule by confining its operation, under proper notice in their tariffs, to cars having a marked capacity between certain maximum and minimum limitations.

The same question was again before us in *Kaye & Carter Co. v. M. & I. Ry. Co.*, 16 I. C. C. Rep., 285. The tariffs of the defendants provided a minimum of 24,000 pounds for cars less than 34 feet in length, 30,000 pounds for cars 34 feet and more in length. The complainant ordered a car 33 feet in length for the shipment of cedar poles from a point in Minnesota to a point in Iowa. The net weight of this shipment exceeded 24,000 pounds, but was less than 30,000 pounds. It could have easily been loaded upon the 33-foot car which was ordered. Charges having been assessed under the tariff upon a minimum of 30,000 pounds, it was held by the Commission that the defendants, not having been able to furnish the car ordered by the complainant, but having furnished a larger car for their own convenience, should make good the minimum for the smaller car. Here, again, it is said:

A carload rate and a minimum weight for a car of definite dimensions when lawfully published in the tariffs of a carrier constitute an open offer to the shipping public to move their merchandise on those terms; and it would be wholly unsound in principle to permit the carrier to impose additional transportation charges on the shipper who orders a car of a capacity, length, or dimensions specified in its tariffs, simply because it is not provided with cars of the dimensions ordered. *Pacific Purchasing Co. v. C. & N. W. Ry. Co.*, 12 I. C. C. Rep., 549, and *General Chemical Co. v. N. & W. Ry. Co.*, 15 I. C. C. Rep., 349.

This same rule has been enforced, under similar circumstances, in several subsequent cases. *Jobbins v. C. & N. W. Ry. Co.*, 17 I. C. C. Rep., 297; *Springer v. E. P. & S. W. R. R. Co.*, 17 I. C. C. Rep., 322; *Corn Belt Meat Producers Assn. v. C., B. & Q. R. R. Co.*, 17 I. C. C. Rep., 533; *Minneapolis Threshing Machine Co. v. C., M. & St. P. Ry. Co.*, 21 I. C. C. Rep., 181.

These decisions all proceed upon the theory that where a carrier by its tariff specifies a certain minimum for a car of a certain size, it thereby tenders to the public that rate of transportation. Having tendered the rate it must protect the public in its use. To accord that rate to one shipper while declining to give it or its equivalent to another would result in discrimination. These cases fully sustain our previous holding in the complaint before us. The tariff of the Baltimore & Ohio specified a minimum of 24,000 pounds for a car less than 36 feet in length. The shipper ordered such a car. After waiting for six days he was furnished a larger car. The complainant did everything in his power to secure the smaller car. A larger car was furnished entirely for the convenience of the railway company. Upon what theory can the defendant charge up to the complainant the result of its own inability to furnish a facility tendered by its tariff?

This shipment of hoops weighed 20,100 pounds. Under the circumstances, the complainant was obliged to pay for the movement of 30,000 pounds. Suppose, now, that the competitor of the complainant had also desired to make shipment of 20,100 pounds of hoops and had applied for and received a car 33 feet in length. He would have paid for the movement of 24,000 pounds. This is a clear discrimination in transportation charges against the complainant which ought not to be possible under the tariffs of the defendants.

The defendants urge that they protect shippers up to cars 40 feet 6 inches in length by their present tariffs, and that it is unreasonable to ask them to go further. But why? If in answer to this requirement of the complainant for a 33-foot car the Baltimore & Ohio had furnished a car 50 feet in length, upon what ground can it be said that the complainant should be required to pay for the minimum applicable to that car? He did not need it, and the use of it was no better to him than that of the 33-foot car.

The Baltimore & Ohio states that it only owns some 90 cars which are more than 40 feet 6 inches in length. But how does that alter the case? If that company, having no other car available or having no other use for one of these larger cars, sees fit for its own convenience to use it in place of the car ordered by this complainant, how can he be required to pay for a minimum which he neither asks nor can use? From our viewpoint it would be the height of injustice to compel this shipper to bear this burden, which arises not from any act or fault of his but from the equipment conditions which prevail upon the railroad of the defendant.

The carriers state that they have a certain amount of small equipment which they desire to utilize, and it is with this view that tariffs like the above are established. They refer by way of illustration to the movement of cement which can generally be loaded to the

marked capacity of the car, whatever that may be. They say that to permit the cement factory to call for a 30,000-pound car will compel them, in point of fact, to furnish much larger capacity cars for the movement of cement in 30,000-pound lots, since the manufacturer often finds it easier to sell small carloads than large ones.

There are undoubtedly difficulties in the way of using this small equipment. It would, without question, be easier for the railroad if the shipper could be required to bear the burden of these difficulties, but inasmuch as they are created by the carrier we are unable to see why they should rest upon the shipper. If a railroad publishes a tariff under which one manufacturer of cement can do business in 30,000-pound car lots, his competitor must be given the same privilege. The carrier may withdraw this small equipment from the handling of cement and confine it to other uses where the same embarrassment does not exist.

While we must adhere to our previous decision in this and similar cases, there may be special instances where carriers in the public interest might well be suffered to depart from that rule. In the movement of commodities where the size of the carload is, in the very nature of things, unimportant, where the discrimination which might arise must be insignificant, tariffs not in accord with such a rule might perhaps be sustained. For example: In the movement of grain and flour for export it is possible that the carrier might properly provide that the marked capacity of the car should govern and that it would only undertake to furnish for the movement such equipment as might be available. If such special cases arise carriers may deal with them in particular tariffs, the lawfulness and propriety of which can be considered by us in each individual instance. The provision insisted upon by the carriers in this proceeding is one of universal application, and as such we regard it as unjust and unreasonable.

Carriers also call our attention to the converse of the situation presented in this case; namely, the ordering of a larger car which is not available. The Commission suggests in rule 66 that in such case the carrier should provide by tariff provision that where the larger car can not be had and two smaller cars are furnished for the convenience of the carrier, the minimum applicable to the larger car shall be protected or, at least, that one of the smaller cars should be loaded to its minimum capacity and the balance of the shipment charged for at the carload rate. It is earnestly insisted here, as in the former case, that it is unreasonable to permit a shipper to order these large-size cars simply because the carrier perforce of the desire to utilize its equipment has specified in its tariff a minimum for a car of that size. The Baltimore & Ohio inquires if, having but 90 cars more than 40 feet 6 inches in length, it ought to be required to furnish, upon notice,

equipment of this size, or, in case it is unable to do so, to furnish two cars at the minimum applicable to the larger car.

The carriers point out that whatever course is adopted with respect to these large cars may result in more or less discrimination. Furniture, for example, can ordinarily be loaded to the minimum provided, but some kinds of furniture can not be. Assume, now, that the minimum specified for a 50-foot car is 20,000 pounds and that a shipper has 20,000 pounds of furniture which he desires to ship, but which could not be loaded into a car of that size. He orders a car 50 feet in length and receives two cars 40 feet in length, into which his shipment can be loaded. He obtains thereby a more favorable rate than he would have obtained had the 50-foot car been furnished.

The provision in rule 66 that the two cars shall only be used upon the one car basis, provided that the shipment could have been loaded into one car of the size ordered, would, if capable of enforcement, prevent this discrimination; but, in point of fact, the application of that rule in most instances where discrimination might otherwise result would only lead to confusion and contention.

Upon the other hand, if the carrier omits all reference in its tariff to the 50-foot car, but nevertheless furnishes such a car to one shipper of a light and bulky article, while not supplying it to another, here again an even worse discrimination may arise. In this dilemma it is insisted that the two-for-one rule ought not to be enforced in case of these large cars which exceed in length what may be termed standard equipment.

While it is true that the sort of discrimination pointed out by the carriers might occasionally arise in the application of the two-for-one rule, the extent of that would be inconsiderable if carriers were to require one of the two cars to be loaded to capacity and also to the minimum specified for a car of that size, the balance of the shipment going at the carload rate. This would, to be sure, compel carriers to handle the residue of the shipment at the carload rate, but their tariffs already provide for exactly that contingency where more than a carload is presented at one time by one consignee for shipment. The danger of discrimination would be very much less where the tariff specified the minimum for the larger car and provided for the furnishing of two cars when the one was not available than as though no minimum was provided for the large car.

We are of the opinion and hold that where carriers by their tariffs specify a minimum for these large-size cars they should further provide that when such cars are not available two smaller cars may be used under such conditions as will fairly protect the minimum specified for the larger car.

It will be noted that rule 66 only applies in cases where carriers provide by their tariffs specified minima for cars of given dimensions.

This is ordinarily the rule in official classification territory, but with respect to some articles in official classification territory and with respect to most articles in other portions of the country, the minimum is named without reference to the size of equipment. Nevertheless, carriers publishing this minimum do have and do furnish cars of various lengths. For example, the minimum upon most kinds of furniture in transcontinental tariffs was fixed with reference to cars 40 feet in length, but it sometimes happens that cars of but 36 feet in length are furnished, while in many instances 50-foot equipment is supplied. It is evident, as already suggested, that the furnishing of a large car to one shipper and a small car to another shipper in the case of a light and bulky article which can not be loaded to the minimum in the small car, even though the physical capacity of the car is exhausted, might result in discrimination. That phase of the matter is not, however, considered at this time and is only referred to for the purpose of preventing any application of what is here said to that situation.

The only tariff under consideration in this proceeding is that of the Baltimore & Ohio referred to in the opening paragraph, and our order must be confined to that. Our opinion, however, is in response to the questions presented by the carriers upon the rehearing. We hold that in all cases where a carrier by its tariff establishes particular minima as applicable to cars of given dimensions, it must furnish a car of the size provided for in the tariff and ordered by the shipper, or, in case of its inability to do this, must provide other equipment, under such conditions as to fairly protect the minimum of the car ordered, and that its tariff should contain a provision thereto.

The carriers contend that shippers should be required to adapt their necessities to the equipment which is available, even though the tariff may offer other equipment, and this, within reasonable limits, is true. We feel that shippers desiring to use equipment of unusual size may fairly be required to give a considerable notice of that desire to the carrier, so that the equipment ordered may be supplied. We are inclined to think, also, in order to avoid all dispute and favoritism that the tariff of the carriers should provide a time within which, where equipment of a particular size is ordered, that equipment may be furnished. In the case before us the complainant waited six days for the small car. In our opinion, it would not be unreasonable for carriers to provide in their tariffs that the minimum applicable to the special car would not be protected unless the carrier had failed for six days, excluding the day of notice, to furnish the size of car ordered. It is not intended to relieve carriers from the duty of furnishing equipment within a reasonable time, but simply to fix a definite period beyond which the duty to furnish other equipment in lieu of that ordered shall attach.

IN THE MATTER OF TRANSPORTATION OF COMPANY MATERIAL.

Decided February 13, 1912.

Former rulings as to reparation in connection with shipments of property intended for the use of carriers discussed and further statements made thereon.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The Commission has had occasion to decide several cases involving claims for reparation in connection with shipments of property of, or intended for the use of, a carrier subject to the act, and which was transported by one or more other carriers.

From numerous inquiries and complaints, in which damages have been claimed, due to misrouting, it appears that more or less of misunderstanding has arisen in connection with expressions made with regard to some particular case, which expressions have apparently been taken by some as modifying or superseding previous expressions, general in character and application, contained in our conference rulings. We take this means, therefore, of attempting to clear up such misunderstandings. The rulings herein referred to are those contained in the Commission's Conference Rulings Bulletin No. 5.

On September 15, 1906, we decided, rule 207, that nothing but money can lawfully be received or accepted in payment for transportation subject to the act, whether of passengers or property, or for any service in connection therewith. That ruling has been fully sustained by the courts.

On November 18, 1907, we decided, rule 9, that where stock in one railway company is owned by another railway, but both maintain separate organizations and report separately to the Commission, they may not lawfully carry freight free for each other.

On February 8, 1909, rule 143, in an instance where the initial carrier disregarded routing instructions for a shipment which was consigned to a private person, but was in fact the property of a connecting line which, under the routing designated, could have hauled it from the junction point indicated in the instructions, we held that a carrier accepting a shipment with specific routing instructions must move the traffic in accordance therewith or bear the damages arising out of its departure from those instructions.

On November 13, 1908, rule 225, we decided that under the law a carrier, or a person or corporation operating a railroad or other transportation line, may not, as a shipper over the lines of another carrier, be given any preference in the application of tariff rates on interstate shipments, but it may lawfully and properly take advantage of legal tariff joint rates, applying to a convenient junction or other point on its own line, provided such shipments are consigned through to such point from point of origin and are, in good faith, sent to such billed destination. In this ruling we said:

When a carrier is the consignee of a shipment of its own property which moves under a joint rate, and is to participate in the haul of same via its own line, routing instructions of consignor to a specified junction point on the line of consignee, carrier must be observed.

The words "of its own property" were not there used with reference to the technical or actual ownership of the property during transportation; they were intended to refer to property actually owned by the carrier, or in good faith purchased or contracted for for its use. In *In the Matter of Restricted Rates*, 20 I. C. C. Rep., 426, we held that preferential rates on property consigned to or intended for the use of a railroad, lower than those accorded to other shippers of the same commodities between the same points, were unlawful.

To all of the above rulings we still adhere, but now, as when they were made, with the understanding that they apply only to bona fide transactions made and carried out in good faith. They were not originally intended and are not now intended as opportunities or cloaks for any practices, which in purpose or in effect result directly or indirectly in departure from lawful tariff rates and charges, or under which a carrier as a shipper over the line of another carrier is given any preference over any other shipper of the same commodity between the same points.

Some of the individual cases hereinbefore referred to disclosed questionable features or practices which were animadverted upon or condemned.

A carrier as a shipper over the lines of another carrier may not have any preference in the application of transportation rates and charges. Conversely, it may have the same privileges under the tariffs as any other shipper. Firms and individuals have an undoubted right to enter into contracts of purchase and sale under which the consignor pays an agreed portion of the transportation charges and the purchaser or consignee another portion of those charges. A carrier as a shipper has the same right. Under the law and the long-established custom a carrier has the right to require prepayment of its charges, or to transport the freight and collect all of such charges on delivery thereof, or to accept part of the charges in prepayment and collect the remainder upon delivery.

The contract of purchase and sale of the property shipped and the actual or technical ownership of it at the time it is shipped or during the transportation are not matters of importance or concern so long as such contracts and ownership are not resorted to or permitted to be cloaks or excuses for effecting either directly or indirectly evasion of or departure from lawful tariff rates, rules, and charges. Any attempt to evade the law or to apply the rulings of the Commission to other than bona fide transactions in good faith, or in other than their clear intent and purpose, will, of course, be treated and dealt with in accordance with the facts in the case.

In some cases of misrouting damages are claimed by the consignor and in some instances by the consignee carrier. If the consignee carrier has been damaged by being deprived of the opportunity of a haul and a division of earnings on its property, manifestly the measure of those damages is not the full division of the rate, because it would have cost that carrier something to perform the haul. The difficulty of accurately determining the difference between what it would have earned and what it would have cost it to perform the service is obvious.

The proportions in which the transportation charges will be borne by the vendor, who is presumably the consignor, and the consignee carrier are doubtless reflected in the contract purchase price, and in order that confusion and controversy may be avoided, that questions of damages may be simplified and that findings with relation thereto may be definite and certain, we think that property of a carrier as described herein should be consigned to that carrier, or to that carrier in care of a named individual, at the designated and agreed point of delivery. It would also be manifestly helpful if the contract of purchase and sale provides that the vendor or consignor shall bear a certain specified part of the transportation charges, provided the property is transported by a designated route or junction point, but that if it is not so transported the entire transportation charges will be borne by the vendor or consignor. If this is done damages due to misrouting are clearly damages to the vendor or consignor caused by the carrier responsible for the misrouting, and the measure of those damages could be accurately computed as the difference between the transportation charges paid by the vendor or consignor and what he would have paid if the routing instructions had been observed. The difficulties hereinbefore noted of determining the damage to the consignee carrier would be obviated.

We think this plan should commend itself so highly as to effect its adoption universally.

No. 3547.

J. K. GILL COMPANY ET AL.

v.

OREGON RAILROAD & NAVIGATION COMPANY ET AL.

Submitted January 14, 1911. Decided February 5, 1912.

1. Rate of \$3 per 100 pounds charged by defendants for transportation of manila paper filing folders in less than carloads from Chicago, Ill., Grand Rapids, Mich., and Cincinnati, Ohio, to Portland, Oreg., found to be unduly discriminatory to the extent that it exceeds a rate of \$1.75 per 100 pounds, which latter rate is prescribed for the future.
2. Rate of \$2.20 per 100 pounds charged for transportation of two less-than-carload shipments of adding-machine paper from Chicago, Ill., to Portland, Oreg., found to have been unduly discriminatory and lower rate prescribed for the future. Reparation awarded.

Edward M. Cousin for complainants.

A. C. Spencer for Oregon Railroad & Navigation Company; Southern Pacific Company; Chicago, Rock Island & Pacific Railway Company; and Union Pacific Railroad Company.

James B. Kerr for Spokane, Portland & Seattle Railway Company; Great Northern Railway Company; and Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in buying and selling books, stationery, and general office supplies, with their principal places of business at Portland, Oreg. By petition, filed September 20, 1910, they assail as unreasonable and unduly discriminatory a rate of \$3 per 100 pounds charged by defendants for the transportation of manila paper filing folders in less than carloads from Chicago, Ill., Grand Rapids, Mich., and Cincinnati, Ohio, to Portland, Oreg.

Another petition, filed on the same date by the J. K. Gill Company, alleges that it was charged an unreasonable rate for the transportation of two shipments of adding-machine paper in less than carloads from Chicago, Ill., to Portland, Oreg. Reparation is asked in each petition.

The question involved in the first petition is partly one of tariff interpretation. Transcontinental freight bureau westbound tariff, effective February 6, 1911, contains a provision, which has been in force in substantially the same form for a number of years, as follows:

Paper. Wrapping paper, n. o. s. (including wrapping paper [not printed], manila tag board, poster, and tailors' pattern paper), \$1.10 per cwt. l. c. l., 75 cents per cwt. c. l.

Complainants contend that manila paper filing folders are analogous to manila tag board, and are therefore entitled to a rate of \$1.10 per 100 pounds. There is no specific rate to cover manila paper filing folders, and defendants contend that they must be rated as stationery under western classification, which provides: "Stationery n. o. s., boxed, 1st class." The first class rate from the points named to Portland is \$3 per 100 pounds.

Manila paper filing folders are vertical folders used extensively for record or business files in office cabinets. Some have printed instructions on them and some have not. They are a manufactured product known to the trade as an article of commerce entirely distinct from paper in rolls, bundles, or packages in its unmanufactured state. They are made largely from a paper known to the trade as manila tag board, which fact constitutes the chief ground for the contention that they should be considered as within the tariff description of "manila tag board." We are not favorably impressed with this contention. "Manila tag board" is a trade name for a certain kind of paper in its raw state, while "manila paper filing folder" is a trade name for a product manufactured from the raw material. Both are articles of commerce, but they are not identical, and are not so recognized by the trade. Each has its own trade name wholly separate and distinct from the other. We are of opinion that under the tariff as now in force the rate prescribed for paper known as manila tag board is not applicable to the manufactured article known to the trade as manila paper filing folders.

There is a further contention by complainants that the class rate of \$3 per 100 pounds, as applied to manila paper filing folders, is unreasonable and unduly discriminatory. Upon the facts of record there would seem to be just ground for this contention. The difference of \$1.90 per 100 pounds between the rate on manila tag board, the raw material, and the rate applied to the manufactured product here in question, is out of due proportion to any difference in value or in cost of transportation so far as shown by the record. The filing folders are cut to shape and folded, sometimes entirely plain and sometimes with printed matter on them. The manner of their shipment is much the same as that of the sheets of manila tag board, or

the raw material. In preparation for shipment both are packed flat in packages or bundles, and the weight for the occupied car space is about the same as to either commodity. The transportation service can not be materially different in cost or in the manner of handling the traffic.

There is some evidence which tends to show that the rate on manila tag board is a water competitive rate, and for that reason should not be accepted as legitimate or proper for comparison with the rate on filing folders. This difference is not sufficient, however, to justify so great a disparity in the rates applied to the two commodities.

The record shows that in the past considerable uncertainty has existed as to what rate should be applied to manila paper filing folders. Different shippers, and in some instances the same shippers, have been charged rates that varied from \$1.75 to \$3 per 100 pounds. This situation was apparently due to varying opinions of officials of different carriers, and to different views not infrequently entertained by officials of the same carrier, as to what rate should be charged under the tariff. Uncertainty and confusion were the inevitable result. Some shippers were charged \$1.75 per 100 pounds, some were charged the third class rate of \$2.20, and others the first class rate of \$3. Among the articles specifically named in the tariff as taking a rate of \$1.75, are cardboard, cut cards, envelopes in boxes, ledger paper, and writing paper.

Manila paper filing folders are extensively used, have come to be an established article of commerce well known to the business world, and should be relieved from all uncertainty as to transportation rates. We see no reason why there may not be established a rate specifically applicable to their transportation from and to the points in question, stated in terms plain enough to avoid uncertainty of interpretation.

Under all the circumstances, we are of opinion and find that the rate now being charged is unduly discriminatory against complainants and their traffic in this commodity to the extent that it exceeds a rate of \$1.75 per 100 pounds, which will be prescribed as the rate for the future.

We find that complainants have been damaged to the extent the rates paid by them exceeded \$1.75 per 100 pounds, and that reparation should be awarded on that basis. The record, however, does not contain the basis for a specific award of reparation. Complainants may submit proof of shipments made and of the payment of freight charges under the rate herein found discriminatory, and an award of reparation will thereupon be made.

As to the second petition, it appears that in November, 1908, complainant, the J. K. Gill Company, shipped via the lines of the Chicago & North Western Railway Company, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the

Oregon Railroad & Navigation Company, from Chicago, Ill., to Portland, Oreg., two less-than-carload lots of adding-machine paper, of the aggregate weight of 7,780 pounds, for which transportation charges were collected in the sum of \$171.16 at a rate of \$2.20 per 100 pounds.

Western classification in force when the shipments moved rated "roll paper for adding machines," in boxes, as third class. By the tariff in force at the time the third class rate from Chicago to Portland was \$2.20 per 100 pounds, and that was the rate applied. There was in force at the same time, from and to the same points, a commodity rate on "check paper for cash registers" of \$1.75 per 100 pounds in less than carloads. Complainant's contention is that the rate on adding-machine paper should be the same as on check paper for cash registers. The defendants, except the Chicago & North Western Company, admit in their answers that the rate should be the same on both commodities and express a willingness to make reparation on the basis of a rate of \$1.75 as to the shipments in question.

The two articles are similar in character and value, and the manner of their shipment is practically the same. There is nothing to indicate that a higher transportation rate may justly be demanded for one than for the other. The Chicago & North Western does not contend specifically that the rate on adding-machine paper should be higher than on check paper for cash registers. It simply denies that the rate charged on the shipments was unreasonable.

Under the circumstances, we are of opinion and find that the rate charged was unduly discriminatory to the extent that it exceeded a rate of \$1.75 per 100 pounds, and that rate will be prescribed as the maximum for the future. We further find that complainant, J. K. Gill Company, made two less-than-carload shipments of adding-machine paper in accordance with the foregoing statement of facts and paid charges thereon at the rate of \$2.20 per 100 pounds, herein found to have been unduly discriminatory; that said complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the rate of \$1.75 per 100 pounds been applied; and that it is therefore entitled to an award of reparation in the sum of \$35.01, with interest from February 18, 1909.

An order will be entered in accordance with the conclusions herein stated.

No. 3933.

ALPHA PORTLAND CEMENT COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL

Submitted November 1, 1911. Decided January 15, 1912.

1. Complainant operates a cement mill at Manheim, W. Va., 180 miles east of the Buffalo-Pittsburgh line, which divides trunk line and central freight association territories. The Universal portland cement mill, at Universal, Pa., within the switching limits of Pittsburgh, is a competitor. Universal is considered as being in trunk line territory, where Manheim also is located, as to shipments east, and in central freight association territory on central freight association shipments. Universal, therefore, on shipments to central freight association territory derives the benefit of the central freight association cement basis adopted by central freight association carriers, which is 73½ per cent of the sixth class mileage scale for similar distances. Manheim rates to central freight association territory, however, are made upon the old established basis, long in effect between trunk line and central freight association territories, of a certain percentage of the New York-Chicago rate, dependent upon the central freight association percentage group in which point of origin or destination is situated. The present comparative basis from Manheim is the result alone of a strict observance of the Buffalo-Pittsburgh line in rate construction. Upon complaint of unjust discrimination against Manheim; *Held*, Considering the complaint upon its substantial merits from a transportation standpoint, without regard to any arbitrary geographical line of demarcation between different methods of tariff construction, that the relative adjustment between the two mills is unduly preferential to Universal.
2. When general rate adjustments in and between large territories, which contemplate substantial justice between all shippers generally, result in individual instances of disproportionate inequality, they fail in their purpose to that extent, and their strict observance in such cases upon no other ground than the arbitrary theory of their existence should yield to the extent necessary to prevent gross injustice, just as many other general rules are necessarily subject to exceptions.
3. Reparation to be awarded upon satisfactory proof of the amount due under these findings on complainant's shipments within the statutory period.

Louis H. Porter and *Archibald Cox* for complainant.

William Ainsworth Parker for Baltimore & Ohio Railroad Company; Baltimore & Ohio Southwestern Railroad Company; Baltimore & Ohio Chicago Terminal Company; Valley Railroad Company of Virginia; Cincinnati, Hamilton & Dayton Railroad Company.

Geo. E. Shaw for Bessemer & Lake Erie Railroad Company.

Hal H. Smith for Wabash Portland Cement Company and other interveners.

C. A. Severance for Universal Portland Cement Company, intervener.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The main line of the Baltimore & Ohio Railway west from Baltimore divides at Cumberland, Md., the lower division continuing west to St. Louis and the upper line northwest through Pittsburgh to Chicago. Complainant owns and operates a cement mill at Manheim, W. Va., 77 miles west of Cumberland, and 2 miles north of this lower or St. Louis main line, with which it is connected at Rowlesburg, W. Va., by the Morgantown & Kingwood Railway. The latter carrier operates from that point northwest through Manheim to Morgantown, W. Va., a point on a Baltimore & Ohio branch line which connects the St. Louis and Chicago lines. Both Manheim and the Morgantown & Kingwood Railway, therefore, are wholly dependent upon the Baltimore & Ohio Railway for an outlet to traffic. Another cement mill, the Universal Portland Cement Company, owned by the United States Steel Corporation, is operated at Universal, Pa., in direct competition with Manheim. Universal is 150 miles north of Manheim and 16 miles east of Pittsburgh, on the Union Railway, and is within the switching limits of Pittsburgh. The allegations of the petition are, in substance and effect, that Manheim is unjustly discriminated against in the matter of freight rates on cement to consuming territory east and west, to the undue advantage of its competitor at Universal. The rates are also alleged to be unreasonable *per se*, but discrimination is the chief basis of complaint.

The eastern rates embrace the territory between Cumberland and Baltimore and south to the Virginia cities, and the western rates practically all of central freight association territory bounded by the St. Louis and Chicago rails of the Baltimore & Ohio, as well as certain points in Michigan, Wisconsin, and Kentucky. As the Baltimore & Ohio is in effect the real originator of the traffic from both mills and a large final distributor, it is the chief defendant and has assumed the burden of the defense.

Several mills in central freight association territory have intervened protesting against further reductions from the east to that territory in view of the present low rates from the Lehigh district.

The Universal Portland Cement Company also has intervened, mainly for the purpose of denying of record certain of complainant's charges against the United States Steel Corporation in its alleged influence over the Universal rates.

The Manheim mill was purchased by the present owners in 1909, and a general revision of rates requested of the Baltimore & Ohio officials in the spring of that year. Some realignment was made of certain short-haul rates from Manheim, and while the justice of many of the other demands apparently was conceded, definite action was delayed until the present complaint was filed, when certain of

the more pronounced discriminations to central freight association points were relieved to some extent. Various reasons were assigned for this inaction, among them being a contemplated increase in Universal rates to central freight association territory, under a uniform central freight association scale then under consideration by carriers in that territory, but the new tariffs from Universal, effective September 12, 1910, instead of aiding Manheim, made substantial reductions to many central freight association points, thereby intensifying an already unjust relation.

It is the contention of complainant that the inequality between the two mills has been perpetuated for no other reason than to favor the United States Steel Corporation, which operates in addition to the Universal mill a similar plant at Buffington, Ind., and through its subsidiary concerns controls a tremendous general tonnage; and certain evidence of the intercorporate relationship between the steel corporation and many of the carriers defendant, as well as between that corporation and other industrial concerns, through a common directorate, is introduced by complainant in support of that contention. But regardless of motive, concerning which we make no finding, it clearly appears that the relative rates as a whole unjustly discriminate against Manheim to the undue advantage of Universal.

There is no specific basis or theory in the construction of the eastern or trunk-line territory rates, tariffs being adjusted to competitive conditions, and theoretically there is no difference in the basis from Manheim and Universal, the latter also being in trunk line territory on eastern shipments. As a matter of fact, however, Manheim rates are constructed on the western termini basis, although Manheim is 130 miles east of those termini, whereas the rates from Universal, which is practically on the Buffalo-Pittsburgh line, separating central freight association and trunk line territories, are based on actual distance. The cement rates in trunk line territory, as well as to the Virginia cities, seem to be influenced or controlled by competition from the Lehigh district, which includes New Jersey and eastern Pennsylvania, although there also are certain mills at Fordwick, Va., and Security, Md.

In constructing rates to central freight association territory Universal is considered a central freight association point and, as suggested, operates under the central freight association scale, which makes the rate between given points in central freight association territory $73\frac{1}{2}$ per cent of the sixth class mileage scale for similar distances, while the rates from Manheim are constructed upon the basis, long in effect between trunk line and central freight association territories, of a certain percentage of the New York-Chicago rate, dependent upon the central freight association percentage group in which the point of origin or destination is situated. The Manheim rates are the same to central freight association territory as from Baltimore, 269

miles to the east of Manheim. It will thus be seen that Universal is in central freight association territory as to shipments west and trunk line territory to the east, thereby enjoying the benefit of competitive conditions in each territory without being subject in either event to a fixed percentage of the New York-Chicago rate.

The alleged necessity for a strict observance from Manheim of the Buffalo-Pittsburgh line as a rate-making theory is the sole justification advanced by the carriers for the discrimination between the two mills, which discrimination, however, they claim is not undue. Defendants apprehend grave results attendant upon a departure from the percentage basis from Manheim, both in its effect in and from trunk line territory and upon the present central freight association scale itself. It is admitted, however, that the Manheim basis is inadequate in some instances and the carriers have made certain reductions since the hearing, or, in the language of the main defendant's brief, have given as much weight to competitive conditions "as it felt could be done without injury to the general structure of cement and other rates from the Lehigh district and other points in trunk line territory into central freight association territory."

There is no claim of transportation conditions, in cost of service or otherwise, in support of a comparatively higher level of rates from Manheim than from Universal, either to trunk line or central freight association territories. Upon the whole, one mill is about as advantageously located as the other, the distance being practically the same to the southern part of central freight association territory, favoring Universal to the northwest and Chicago, and aiding Manheim in substantially the same relative degree to the east and southeast. Both mills reach the Baltimore & Ohio by short hauls of other lines, the cost of which must be absorbed or allowed in the joint rate, and no differentiating traffic condition has been shown or claimed.

Considering all the facts of record, it is our view that Manheim is subjected to an unjust discrimination which is wholly unwarranted upon the theory advanced or the transportation conditions shown of record. When general rate adjustments in and between large territories, which contemplate substantial justice between all shippers generally, result in individual instances of disproportionate inequality, they fail in their purpose to that extent, and their strict observance in such cases upon no other ground than the arbitrary theory of their existence, should yield to the extent necessary to prevent gross injustice, just as many other general rules are necessarily subject to exceptions. We have therefore considered these rates without regard to any imaginary geographical line of demarcation between different methods of tariff construction and upon no definite rule except relative justice between the two mills. We have based our findings upon discrimination, without passing at this time upon

the reasonableness *per se* of the Manheim rates. We do not desire, therefore, to be precluded by anything here said in any future complaint against the reasonableness *per se* of any of these rates from either mill.

We have compiled a table of the specific rates, with recent changes, from Manheim and Universal, together with distances, and embody therein the data upon which our findings are based as to the extent to which the discrimination against Manheim is found to be unlawful. The rates eastbound follow the main line of the Baltimore & Ohio Railroad from Cumberland to Baltimore and Washington, and north on connecting lines to Hagerstown, Md., and south to the Virginia cities. Both here and in central freight association territory the same rates apply from each mill to many points of different distances, although they are not published as group rates, and in prescribing a reasonable differential we do not interfere with this grouping except, perhaps, in a few instances of slight difference in that respect from the two points of origin. The westbound rates follow, in their order, the St. Louis main line of the Baltimore & Ohio, and branches, from Parkersburg west to St. Louis; the line of that carrier from Wheeling west through Columbus to a connection with the St. Louis line at Blanchester, Ohio; its Chicago main line and branches from northeastern Ohio to Chicago; and finally, points on connections between its St. Louis and Chicago rails, together with a few isolated rates in Kentucky, Michigan, and Wisconsin. The distances, submitted by complainant, are generally Baltimore & Ohio mileages, and as they have not been seriously questioned or a revised list submitted by defendants we have accepted them as substantially correct in expressing relative distances.

It will be seen that beyond common junction points the increase is greatly in favor of Universal. Thus while the rate to Cincinnati is \$1.70 from Universal and \$1.75 from Manheim, for practically the same distance, the rate west increases as much as \$1.04 per ton (at Pana, Ill.) more from Manheim than from Universal, for the same additional service. The same general condition prevails, but in lesser degree, beyond Wheeling and Cumberland. In the absence of justifying proof we can but consider many of these rates, especially west of Cincinnati, as flagrant discriminations. We do not mean to say that rates beyond a common junction point from different points of origin must in every case increase in equal ratio, regardless of relative distances and other possible material considerations, but a substantial disparity in this regard imposes upon the carriers the burden of justification by showing a dissimilarity of conditions from the favored section, which justification has not here been shown. As suggested, some of these rates have been partially readjusted since the filing of this complaint.

Attention also is called to the rate to Elkins, W. Va., which is \$2 from Manheim and \$1.80 from Universal, for distances of 88 and 203 miles, respectively. Prior to the filing of this complaint the rate from Manheim was \$2.30. This presents the reverse of the low intrastate rate effecting an unjust discrimination against an interstate point. The present rate from Manheim is clearly unjust, both relatively with Universal and *per se*. Complainant asks for an order removing the discrimination, but whether or not our jurisdiction extends to such a case it would perhaps be inappropriate to consider or further discuss the Elkins rate, inasmuch as the Supreme Court now has under consideration the same general question in another proceeding. We assume, however, that the carriers will voluntarily readjust this rate in justice to both mills.

We therefore find that the rates on cement in carloads from Manheim, W. Va., to the points of destination shown in the accompanying table have been and are unjustly discriminatory to the undue advantage of Universal, Pa., said undue advantage being measured by the extent of the difference between the present differential between the two mills and what we prescribe therein as a reasonable differential.

EASTERN RATES.

To—	From Manheim.		From Universal.		Present differential under Universal, per ton.	Reasonable differential under Universal, per ton.
	Distance.	Rate per ton.	Distance.	Rate per ton.		
	<i>Miles.</i>		<i>Miles.</i>			
Oakland, Md.....	23	\$0.80	192	\$1.80	\$1.00	\$1.00
Cumberland, Md.....	77	1.20	145	1.40	.20	.20
Hancock, Md.....	132	1.75	200	1.80	.05	.15
Frederick, Md.....	193	1.75	264	1.80	.05	.15
Hagerstown, Md.....	201	1.75	268	1.80	.05	.15
Winchester, Va.....	206	1.75	274	1.80	.05	.15
Washington, D. C.....	229	1.75	297	1.80	.05	.15
Alexandria, Va.....	237	1.75	305	1.80	.05	.15
Baltimore, Md.....	269	1.75	337	1.80	.05	.15
Stephen City, Va.....	213	2.20	281	2.40	.20	.15
Strasburg, Va.....	225	2.20	293	2.40	.20	.15
Harrisonburg, Va.....	275	2.20	343	2.40	.20	.15
Staunton, Va.....	301	2.20	369	2.40	.20	.15
Lexington, Va.....	337	2.20	405	2.40	.20	.15
Petersburg, Va.....	367	2.40	435	2.40		.15
Norfolk, Va.....	430	2.40	498	2.40		.15
Portsmouth, Va.....	430	2.40	498	2.40		.15
Richmond, Va.....	345	2.40	413	2.40		.15
Roanoke, Va.....	382	2.40	450	2.40		.15
Vinton, Va.....	384	2.40	452	2.40		.15
Lynchburg, Va.....	403	2.40	471	2.40		.15
Cloverdale, Va.....	375	2.40	443	2.40		.15
Basic City, Va.....	286	2.40	354	2.40		.15
Charlottesville, Va.....	343	2.40	411	2.40		.15
Waynesboro, Va.....	370	2.40	438	2.40		.15
Salem, Va.....	399	2.40	457	2.40		.15
Orange, Va.....	315	2.40	383	2.40		.15
Pearisburg, Va.....	455	3.70	523	3.70		.15
South Boston, Va.....	498	3.60	566	3.60		.15
Marion, Va.....	489	3.90	557	3.90		.15
Pulaski, Va.....	441	3.50	509	3.50		.15
Narrows, Va.....	458	3.70	526	3.70		.15
Hollins, Va.....	376	2.40	444	2.40		.15
Abingdon, Va.....	519	4.20	587	4.20		.15
Christiansburg, Va.....	415	3.40	483	3.40		.15
Covington, Va.....	452	2.40	508	2.40		.15
Front Royal, Va.....	205	2.40	273	2.40		.15
East Radford, Va.....	426	3.40	494	3.40		.15
Clifton Forge, Va.....	440	2.40	508	2.40		.15

WESTERN RATES—Continued.

WESTERN RATES—Continued.

To—	From Manheim.			From Universal.			Present differential over Universal, per ton.	Reasonable differential over Universal, per ton.
	Distance.	Rate per ton when complaint filed.	Present rate per ton.	Distance.	Rate per ton prior to September, 1910.	Present rate per ton.		
	<i>Miles.</i>			<i>Miles.</i>				
Pittsburg, Ohio.....	349	\$2.29	\$2.29	301	\$1.70	\$1.70	\$0.59	\$0.45
Hamilton, Ohio.....	353	2.36	2.36	354	1.80	1.70	.06	.06
Middletown, Ohio.....	334	2.36	2.36	306	1.80	1.70	.06	.06
Brighton, Ohio.....	331	1.75	1.75	332	1.80	1.70	.06	.06
Winton Place, Ohio.....	334	1.75	1.75	335	1.80	1.70	.06	.06
Carthage, Ohio.....	338	1.75	1.75	339	1.80	1.70	.06	.06
Lockland, Ohio.....	341	1.75	1.75	327	1.80	1.70	.06	.06
Avondale, Ohio.....	329	1.75	1.75	320	1.80	1.70	.06	.06
Silverton, Ohio.....	335	2.36	2.36	336	1.80	1.70	.06	.06
Norwood, Ohio.....	332	1.75	1.75	333	1.80	1.70	.06	.06
Lebanon, Ohio.....	357	2.36	2.36	358	1.80	1.70	.06	.06
Lewisburg, Ohio.....	343	2.36	2.36	315	1.80	1.70	.06	.06
Antwerp, Ohio.....	398	2.46	2.46	339	1.80	1.80	.06	.20
Fort Wayne, Ind.....	433	2.46	2.46	338	1.80	1.80	.06	.20
Muncie, Ind.....	403	2.46	2.46	348	1.90	1.80	.06	.20
Connersville, Ind.....	395	2.46	2.46	396	1.90	1.90	.06	.20
Decatur, Ind.....	438	2.46	2.46	326	1.80	1.80	.06	.20
Adrian, Mich.....	402	2.46	2.46	301	1.80	1.80	.06	.20
Peoria, Ind.....	362	2.46	2.46	363	1.80	1.70	.06	.20
Bluffton, Ind.....	454	2.46	2.46	342	1.90	1.80	.06	.20
Anderson, Ind.....	422	2.53	2.53	367	1.90	1.90	.06	.20
Yorktown, Ind.....	409	2.53	2.53	354	1.90	1.90	.06	.20
Ann Arbor, Mich.....	420	2.53	2.53	318	2.00	1.70	.06	.20
Flint, Mich.....	471	2.53	2.53	370	2.10	1.90	.06	.20
Bay City, Mich.....	517	2.53	2.53	416	2.20	2.10	.06	.20
Saginaw, Mich.....	507	2.53	2.53	406	2.20	2.06	.06	.20
Indianapolis, Ind.....	442	2.56	2.56	396	2.10	2.06	.06	.20
Noblesville, Ind.....	441	2.56	2.56	418	2.10	2.06	.06	.20
Elwood, Ind.....	428	2.56	2.56	390	2.10	2.06	.06	.20
Shelbyville, Ind.....	410	2.56	2.56	383	1.90	1.90	.06	.20
Rushville, Ind.....	413	2.56	2.56	364	1.90	1.90	.06	.20
Arlington, Ind.....	420	2.56	2.56	424	2.10	2.06	.06	.20
Pendleton, Ind.....	430	2.56	2.56	375	2.10	2.06	.06	.20
Guilford, Ind.....	356	2.56	2.56	357	1.90	1.90	.06	.20
Manchester, Ind.....	359	2.56	2.56	360	1.90	1.90	.06	.20
Batesville, Ind.....	375	2.56	2.56	376	1.90	1.90	.06	.20
Greensburg, Ind.....	390	2.56	2.56	391	1.90	1.90	.06	.20
Lafayette, Ind.....	503	2.80	2.80	448	2.40	2.16	.06	.15
Terre Haute, Ind.....	514	2.80	2.80	465	2.20	2.20	.06	.15
Valparaiso, Ind.....	527	2.80	2.80	442	2.10	2.10	.06	.15
Kentland, Ind.....	547	2.80	2.80	468	2.40	2.20	.06	.15
Crawfordsville, Ind.....	485	2.80	2.80	444	2.20	2.16	.06	.15
Bloomington, Ind.....	492	2.80	2.60	458	2.10	2.16	.06	.15
Madison, Ind.....	425	2.80	2.80	452	2.10	2.16	.06	.15
Manistee, Mich.....	754	2.80	2.80	550	2.80	2.30	.06	.15
Danville, Ill.....	527	2.80	2.80	478	2.20	2.20	.06	.15
Waukegan, Ill.....	612	2.80	2.80	538	2.70	2.20	.06	.15
Evanston, Ill.....	544	2.80	2.80	514	2.80	2.30	.06	.15
Joliet, Ill.....	581	2.80	2.80	507	2.40	2.20	.06	.15
Blue Island, Ill.....	576	2.60	2.80	502	2.40	2.20	.06	.15
Kenosha, Wis.....	628	2.60	2.80	564	2.70	2.30	.06	.15
Racine, Wis.....	635	2.70	2.80	564	2.80	2.30	.06	.15
Milwaukee, Wis.....	642	2.70	2.80	586	2.80	2.30	.06	.15
Manitowoc, Wis.....	739	2.80	2.80	668	2.80	2.30	.06	.15
Lexington, Ky.....	396	2.80	2.80	411	2.20	2.20	.06	.15

We further find that complainant has been damaged by said unjust discrimination to the extent of the difference between the present differential between these two mills and the reasonable differential indicated, and is entitled to reparation on all shipments under these rates for the period from two years prior to the filing of the present complaint to the effective date of this order. The amount of reparation to be awarded upon the findings in this case should be ascertained in the first instance by the parties and presented to the Commission upon stipulation, after checking the shipments; and 60 days will be allowed for this purpose, at the expiration of which time such further steps will be taken as may be necessary to a correct determination of the amount due, upon which to base an order.

An order will be entered in accordance with these views.

22 I. C. C. Rep.

No. 3774.

HOUSTON PACKING COMPANY

v.

TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL.

Submitted February 20, 1911. Decided February 13, 1912.

1. Rates of 32 cents per 100 pounds on packing-house products and 35 cents per 100 pounds on fresh meats in carloads from Houston, Tex., to Lake Charles, La., found unreasonable so far as they exceed, respectively, 20 cents and 25 cents per 100 pounds.
2. Rates of 36 cents per 100 pounds on packing-house products and 40 cents per 100 pounds on fresh meat in carloads from Houston, Tex., to New Orleans, La., not found unreasonable.

W. S. Hunt for complainant.*Baker, Botts, Parker & Garwood* for Texas & New Orleans Railroad Company and Louisiana Western Railroad Company.*Andrews, Ball & Streetman* for St. Louis & San Francisco Railroad Company.*T. J. Freeman* for Texas & Pacific Railway Company and International & Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with principal offices at Houston, Tex. By petition, filed January 21, 1911, it attacks as unreasonable and unjustly discriminatory defendants' rates on packing-house products and fresh meats from Houston, Tex., to Lake Charles and New Orleans, La. Reparation is asked.

The following table shows the commodity rates in issue, together with the class rates which would be applicable to said commodities in the absence of specific rates thereon:

Rates on packing-house products and fresh meats.

HOUSTON TO LAKE CHARLES.

Date.	Packing-house products.	Fifth class.	Fresh meats.	Third class.
	Cents.	Cents.	Cents.	Cents.
Prior to October 11, 1910.....	20	.....	25	.....
After October 11, 1910.....	32	20	25	31

HOUSTON TO NEW ORLEANS.

Prior to December 11, 1909.....	40	.....	45	.....
After December 11, 1909.....	34	.....	32	.....
After April 15, 1910.....	32	.....	30	.....
After June 11, 1910.....	30	33	30	30

It will be seen that contrary to the usual rule the present commodity rates to Lake Charles are greatly in excess of the class rates, and that the same condition obtains, although in a lesser degree, as to the rates on packing-house products to New Orleans. The commodity rate on fresh meats to New Orleans is lower than the class rate. In explanation the carriers state that the present class rates to Lake Charles were originally established to meet threatened water competition; that this competition has failed to materialize and the class rates are to be advanced. The reduction in the commodity rates to New Orleans of December 11, 1909, was also impelled by the same apprehension, and being likewise unfounded in fact, the rates were increased.

Although the rates in question are alleged to unduly favor Sapulpa, El Reno, Oklahoma City, Okla.; Omaha, Nebr.; Kansas City, Mo.; New Orleans, La.; and Fort Worth, Tex., complainant's principal grievance is the alleged undue advantage of Fort Worth, where Swift and Armour plants are met in active competition.

The following is a comparative statement of rates and distances from the various packing centers referred to in the complaint as competitive to Lake Charles and New Orleans:

From—	To Lake Charles, La.			To New Orleans, La.		
	Distance.	Fresh meats.	Packing-house products.	Distance.	Fresh meats.	Packing-house products.
	Miles.	Cents.	Cents.	Miles.	Cents.	Cents.
Houston, Tex.....	144	35	32	359	40	36
Fort Worth, Tex.....	405	42	40	547	48	40
Sapulpa, Okla.....	657	71	45	741.2	55	40
El Reno, Okla.....	629.7	71	45	752.2	55	40
Oklahoma City, Okla.....	603.2	71	45	725.7	55	40
Omaha, Nebr.....	939	80	51	1,061	58	43
Kansas City, Mo.....	745	71	45	867	55	40

Rates upon the commodities here in question, in the same general territory, were recently considered by the Commission in the proceeding entitled *In the Matter of the Investigation of Alleged Unreasonable Rates and Practices Involved in the Transportation of Live Stock, Packing-house Products, and Fresh Meats, etc.*, 22 I. C. C. Rep., 160. Following the conclusions announced in that report, we find that defendants' rates from Houston to Lake Charles are unreasonable so far as they exceed 20 cents per 100 pounds on packing-house products and 25 cents per 100 pounds on fresh meats in carloads, which latter rates will be prescribed as maxima for the future. We further find that defendants' rates on packing-house products and fresh meats from Houston to New Orleans are not shown to be unreasonable.

Upon the facts of record we are of opinion that complainants are not entitled to reparation.

An order will be entered accordingly.

22 I. C. C. Rep.

No. 4077.

WOOD-MOSAIC FLOORING & LUMBER COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted October 10, 1911. Decided February 5, 1912.

Defendant charged 7.7 cents per 100 pounds on logs from McLean's spur, Ky., to Louisville, Ky., said to have been shipped with the understanding that refund would be made to basis of 5 cents upon proof that the manufactured product had been reshipped via defendant's line. The inbound shipments moved during period from May, 1907, to September, 1908, but carrier failed to establish the rate contended for until October, 1908. All outbound movements were made subsequently to October, 1908; *Held*, That the intervening period was unreasonably long. The Commission adheres to its policy of refusing to authorize retroactive application of transit privileges unless for the purpose of removing a discrimination.

W. A. McLean for complainant.

W. G. Dearing for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation having its principal office at Louisville, Ky., and is engaged in manufacturing and selling lumber. Its petition, filed May 4, 1911, alleges that on various dates between May 23, 1907, and September 26, 1908, it made shipments of logs aggregating 327 carloads from McLean's spur, Ky., to Louisville, to be there manufactured and the product reshipped via the defendant's line; that the defendant had agreed that upon proper evidence being submitted of the outbound shipment of the product via its line it would reduce the inbound charges on the logs to the basis of 5 cents per 100 pounds; that for the transportation to Louisville the defendant collected charges at a rate of 7.7 cents per 100 pounds, which rate is alleged to have been unreasonable to the extent that it exceeded 5 cents. Reparation is asked in the sum of \$4,415.95. This claim was first presented to the Commission July 1, 1910.

In December, 1903, certain negotiations were had between the Hugh-McLean Lumber Company and the defendant, as a result of which it was mutually understood that in the event the lumber company purchased a certain tract of timberland near Nortonville, Ky.,

and cut the timber and shipped the logs to Louisville via defendant's line, upon the presentation of evidence that the manufactured product of said logs had moved from Louisville over the rails of defendant, the latter would refund on basis of a rate of 5 cents on the inbound shipments. It is said that as a result of the understanding between the lumber company and the defendant the former acquired the timberland and cut and shipped the logs from a switch known as McLean's spur, which tapped the timberlands and connected with the tracks of defendant near Nortonville, and was put in for the exclusive purpose of handling the logs. The complainant is the successor of the Hugh-McLean Lumber Company. A quantity of logs moved in accordance with the terms of said agreement, and refunds thereon to the basis of the 5-cent rate were made. The refunds ceased in 1906 or 1907, but the shipments continued until about September, 1908. The defendant (through oversight, it is claimed) never published the 5-cent rate, and the same was not legally in force at any time during the movement of the logs; but, effective August 25, 1907, a rate of 7.7 cents per 100 pounds was established. In a tariff effective from October 4, 1908, after shipments had ceased to move from point of origin, there was a provision for a refund down to the basis of a rate of 5 cents on logs shipped from Nortonville and McLean's spur to Louisville, when proper evidence should be presented to the railroad's claim department showing that the manufactured product had been shipped via its line. This tariff, however, made no cancellation and appears to have been the first issue published under which the defendant could legally have granted the refunds. The timber has been cut and removed, the switch has been abandoned, and the track taken up.

The case is predicated mainly upon the theory that there was an agreement for a lower rate, in consideration of which the complainant had purchased, cut, and shipped the timber over the defendant's rails, and therefore the defendant should be required to perform its part of the agreement and refund to complainant the difference between the rate charged and the rate agreed upon.

The Commission has held that it has no authority to administer a remedy in applications for relief based solely upon a contractual relationship between the parties, and that whatever may be the rights and equities of the parties in the courts, the Commission can award reparation only where there has been a violation of the act to regulate commerce.

The major part of the claim, as appears from the record, is barred by the statute of limitations. While the inbound shipments of logs moved between May, 1907, and September, 1908, all of the outbound shipments, alleged to consist of manufactured products, moved subsequently to October, 1909. Even if the Commission should find

that an unreasonable rate had been charged on the logs, it would be impossible to ascertain what portion, or which, of the outbound shipments, constituted outbound tonnage as to which the unreasonable rate was charged on the inbound shipments. Again, the Commission will not order the establishment in the first instance of a transit privilege, nor will it authorize or permit the retroactive application of one voluntarily established by a carrier, except for the purpose of removing a discrimination. We find no merit in the complaint, and it must be dismissed.

No. 3720.

MILBURN WAGON COMPANY

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL

Submitted April 26, 1911. Decided February 5, 1912.

Rate of 51 cents per 100 pounds charged for transportation of a carload of farm wagons from Toledo, Ohio, to Gordo, Ala., found to have been the rate lawfully applicable to the traffic in question under the tariffs on file. No evidence having been adduced which shows that said rate was unreasonable, the complaint is dismissed.

Edward D. Ryan for complainant.

Frank W. Gwathmey for Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture and sale of farm wagons and other vehicles, with its plant and principal place of business at Toledo, Ohio. Its petition, filed December 21, 1910, raises the issue whether a rate of 51 cents per 100 pounds charged by defendants for the transportation of a carload of farm wagons from Toledo (Wagon Works station), Ohio, to Gordo, Ala., was lawfully applicable under the tariffs then in force. Complainant

22 I. C. C. Rep.

alleges that the lawful published rate was 42 cents per 100 pounds, and that to the extent the charges collected exceeded that rate they were unlawful and unreasonable. Reparation is asked.

September 2, 1910, complainant shipped via defendants' lines from Toledo (Wagon Works station) to Gordo, one carload of farm wagons, weighing 24,000 pounds, for which transportation charges were collected in the sum of \$122.40 at a combination rate of 51 cents per 100 pounds, made up of 10 cents from point of origin to Cairo, Ill., and 41 cents beyond. The bill of lading issued by the initial carrier, the Lake Shore & Michigan Southern Railway Company, named a rate of 42 cents. The delivering carrier assessed the charges at a rate of 51 cents.

About a year before the shipment was made complainant had shipped from Toledo, via the same lines, to the same consignee at Gordo a carload of the same traffic, for which transportation charges were collected at a rate of 42 cents. The bill of lading for that shipment named a rate of 42 cents, inserted by the initial carrier.

Shortly after the shipment in question was made complainant desired to ship a carload of farm wagons to Northport, Ala., a point about 22 miles farther south than Gordo, and, upon application to the Mobile & Ohio, was quoted a rate of 44 cents. At the same time the Lake Shore & Michigan Southern quoted a rate to the same point of 52 cents. Complainant thereupon shipped to Northport, via the same lines over which the shipment in question moved, a carload of farm wagons for which transportation charges were collected at a combination rate of 44 cents, made up of 10 cents from Toledo to Cairo and 34 cents beyond.

By southern classification, in force when the several shipments moved, "wagons and carts, farm or lumber," carload minimum 20,000 pounds, were rated sixth class, and they are still so classified. There were certain exceptions to the classification, and among them the following:

Wagons, farm: See agricultural implements.

Under this reference appear these provisions:

Agricultural implements, n. o. s., c. l., min. wt. 20,000 pounds, class K.

Agricultural implements, harvesting machinery, binder twine, gasoline farm engines, and farm wagons without springs, in mixed c. l., min. wt. 20,000 pounds, sixth class.

There was no joint rate applicable to either of the shipments mentioned. Under the tariffs then in force there was a commodity rate of 10 cents from the point of origin to Cairo. From Cairo to Gordo the sixth class rate was 41 cents and the class-K rate 32 cents. From Cairo to Northport the sixth class rate was 42 cents and the class-K rate 34 cents.

There is no complaint of the rate from the point of origin to Cairo. The issue involves only the charges beyond Cairo. Complainant contends that the shipment was entitled to class-K rate beyond Cairo, which was applied to the other two shipments. The Mobile & Ohio contends that the lawful rate was sixth class, and that the application of class K to two of the three shipments was a mistake.

It is not questioned that under the classification proper farm wagons in carloads are sixth class. But the issue involves the exception, not the classification itself. Farm wagons are named in the exception accompanied by the reference "see agricultural implements." Under this reference it is found that agricultural implements, n. o. s., are class K, and agricultural implements in mixed carloads with certain other designated articles, including farm wagons without springs, are sixth class.

To remove all doubt as to the application of these rates, the Mobile & Ohio, after the petition in this case had been filed, sought and obtained a modification of the classification, which became effective March 10, 1911. In its modified form the exception reads as follows:

Wagons, farm, without springs; see item reading:

Agricultural implements, harvesting machinery, binder twine, gasoline farm engines, and farm wagons without springs, in mixed carloads.

Examination of the classification and exception sheet indicates that the word "see," following the name of an article, is used only to direct attention to another item in some way related thereto. For instance, following the reference to agricultural implements under the item "farm wagons," we are informed that farm wagons may be shipped in mixed carloads with certain other articles at the sixth class rate. Had it been intended to apply the class-K rating to farm wagons, it is reasonable to assume that the usual phraseology, "same as" agricultural implements, n. o. s., would have been employed in the same way that it was employed as to other items on the same page of the publication from which we have quoted. Upon consideration of the items applicable to these shipments we conclude that they did not establish a class-K rate on farm wagons, and that the rate lawfully applicable was the sixth class rate. No evidence having been introduced which tends to show that the sixth class rate is unreasonable for this traffic, the complaint must be dismissed, and it will be so ordered.

No. 3361.

LORD & BUSHNELL COMPANY

v.

MISSISSIPPI CENTRAL RAILROAD COMPANY ET AL.

Submitted June 28, 1911. Decided February 12, 1912.

Where more than one route is available for forwarding a shipment, it is the duty of the carrier, in the absence of routing instructions, to forward it by the route taking the lowest rate. Reparation awarded.

G. M. Stephen for complainant.

M. P. Callaway for New Orleans & Northeastern Railroad Company; Alabama Great Southern Railroad Company; and Cincinnati, New Orleans & Texas Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the purchase and sale of lumber, with its principal place of business at Chicago, Ill. In its petition, filed June 28, 1910, it alleges that an unreasonable rate was charged for the transportation of a carload of yellow-pine lumber from Sumrall, Miss., to Dayton, Ohio. The shipment moved July 9, 1907, and the matter was first brought to the attention of the Commission June 24, 1909. Reparation is asked.

The shipment moved over the Mississippi Central Railroad from Sumrall to Hattiesburg, Miss., where it was transferred to the New Orleans & Northeastern Railroad and went forward to Cincinnati by the latter line, the Alabama Great Southern Railroad, and the Cincinnati, New Orleans & Texas Pacific Railroad; beyond Cincinnati the movement was over the Cincinnati, Hamilton & Dayton Railway. Between Sumrall and Cincinnati there was an alternative routing available over the Mississippi Central Railroad to Brookhaven, Miss., thence via the Illinois Central Railroad and connections. The weight of the shipment was 45,700 pounds, and transportation charges were paid by complainant in the sum of \$125.67, based on a rate of 27.5 cents per 100 pounds.

The rate via the route of movement was reduced to 25½ cents per 100 pounds, effective July 10, 1907, one day after the shipment moved. The tariff readjusting the rates by way of Brookhaven and

the Illinois Central Railroad and connections had become effective June 21, 1907, and a rate of 24 cents was in force at the time of the shipment. Thus the available rates as published in the tariffs were 24 cents per 100 pounds via the Brookhaven route and 27½ cents via the Hattiesburg route. There were no routing instructions on the bill of lading, and it was, therefore, the duty of the initial carrier to forward the shipment over the route by which the lower charges would be secured.

Explaining its failure to do this, the principal defendant says that during the period in which this shipment moved there was a shortage of freight cars in this territory; that the only available equipment at the time the shipment was tendered could, under the car-service rules then in force, move only by way of Hattiesburg. The rule governing such a situation at the time the shipment moved is set forth in Tariff Circular 15-A, rule 70, and reads, in part, as follows:

If a foreign car is available which under rules as to car service must be sent via a particular line or route over which a higher rate obtains, agent must explain to the shipper that fact and allow shipper to elect whether he will use that car at the higher rate or wait for another car. If shipper elects to use the car at the higher rate agent should so note on the bill of lading.

The bill of lading shows no notation in accordance with the requirements of this rule. The defendant presented no evidence tending to show that the shipper had been notified that the available car must move over a route carrying the higher rate. In the absence of any proof of waiver on the part of the shipper it must be held that the shipment should have been forwarded over the route carrying the lower rate.

Defendants contend that if it is found that the shipment was mis-routed and should have moved over the Brookhaven route, the rate to be charged should be 25½ cents per 100 pounds, the rate of 24 cents having been published through error. The rate of 24 cents per 100 pounds was in force for more than a year, and then it was advanced to 25½ cents per 100 pounds. The shipment should have been routed by way of Brookhaven, and been assessed a rate of 24 cents.

The Commission is of opinion and finds that the charges in the sum of \$125.67 paid by complainant for the transportation of one carload of lumber from Sumrall to Dayton, as hereinbefore set forth, were unjust and unreasonable in so far as they exceeded \$109.68, based on a rate of 24 cents per 100 pounds; that the unreasonable rate so charged resulted from the mis-routing of the shipment by the Mississippi Central Railroad Company; that complainant was damaged thereby, and that reparation should be awarded complainant in the sum of \$15.99, with interest from August 17, 1907, which should be paid by the Mississippi Central Railroad Company without contribution from the other defendants. An order will be entered in accordance with the conclusions announced herein.

No. 3970.

WASHBURN-CROSBY MILLING COMPANY, INCORPORATED,

v.

SOUTHERN RAILWAY COMPANY.

Submitted October 10, 1911. Decided February 12, 1912.

Demurrage charges alleged to be unreasonable because not assessed upon the average demurrage plan; *Held*, That under the circumstances of this case, the rule prescribed by the defendant was not unreasonable. Complaint dismissed.

T. K. Helm for complainant.

R. Walton Moore and *Charles J. Rixey, jr.*, for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in milling grain at Louisville, Ky. In a petition, filed April 1, 1911, it alleges that the defendant collected demurrage charges in the sum of \$145, when they should have been assessed upon the average demurrage plan in the sum of \$73, and that such charges are unreasonable to the extent of the difference between these two sums. Reparation is sought.

It appears that charges were not assessed upon the average demurrage plan in this instance because the agreement between the complainant and the defendant provided for in the tariff had not been executed in accordance with the requirements of the defendant. The particular clause of such agreement with which we are concerned recites that—

A shipper or receiver who elects to take advantage of this average agreement may be required to give sufficient security to the carrier for the payment of balances against him at the end of each month.

Negotiations were had between complainant and defendant in respect to the execution of the agreement with a view to extending the benefit of the average demurrage plan to complainant. Before this was accomplished, demurrage accrued and charges therefor were assessed in accordance with the provisions of the tariff applicable in the absence of the average demurrage agreement.

For the purpose of providing sufficient security for the payment of the balances at the end of each month, the defendant prescribed a form of bond to be executed by the shipper or receiver and his surety. This bond was tendered to the complainant, but because it

contained a provision to the following effect the complainant's surety declined to execute it:

The undersigned expressly waive any and all notice of the acceptance of this bond, and likewise waive any and all notice of the failure of the principal to comply with the provisions of said agreement or any of them.

In lieu of this form of bond complainant executed and tendered defendant a bond requiring the defendant to notify the surety promptly, and within a limited time, by written notice, at its office in Baltimore, Md., of the default of the principal, together with a statement of the principal facts showing such default and the time thereof. This provision was objectionable to defendant, and the bond and agreement were rejected. Again the form of bond prescribed by the defendant was tendered to the complainant, and shortly thereafter the same was executed and delivered, and the agreement for the average demurrage plan subsequently became effective.

Complainant contends that this requirement of the defendant in respect to this clause of the bond was unreasonable, and that the demurrage charges that accrued during the pendency of the negotiations should have been assessed upon the average demurrage plan.

The provision in the tariff in respect to the assessment of average demurrage is a concession from the straight demurrage charge in favor of the shipper or receiver, a modification of a stringent rule that inures to the benefit of shippers and receivers, and is a privilege or option extended on the part of the carrier to those who will comply with the conditions stated in the tariff. Obviously, the requirement of a bond with sufficient security was intended to relieve the carrier not only from loss, but also from the vexatious pursuit of those in default, and under the circumstances of this case a surety company could not be permitted to dictate in its own interest the terms of a bond that the carrier was offering to the public for a benefit conferred. In the numerous bonds executed under this provision an onerous duty would be imposed upon the defendant if it were required to notify the surety company, in a technical manner, of all defaults of their principals. The main purpose of the clause included in the bond tendered by the carrier was to avoid litigation, not invite it. It does not appear that the form of this bond was objectionable to the complainant, but only to the surety company first applied to. A long list of surety companies that had executed bonds without objection in accordance with the form prescribed by the defendant was filed, and, in fact, the surety company first applied to executed the bond required of the complainant shortly after the defendant had rejected the first bond tendered.

Upon consideration of the facts of this case the rule of the defendant expressed in its tariff above considered is not found to be unreasonable, and an order will be entered dismissing the complaint.

No. 3568.

MERCHANTS & MANUFACTURERS ASSOCIATION OF
BALTIMORE ET AL.

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted April 10, 1911. Decided February 12, 1912.

Rates charged for transportation of certain steel girders, which were too long to be loaded into box cars, not found to have been unreasonable.

A. E. Beck for complainants.

R. Walton Moore for Atlantic Coast Line Railroad Company.

Mr. Sherwood for Baltimore Steam Packet Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant Merchants & Manufacturers Association of Baltimore is an incorporated association of manufacturers and shippers located in Baltimore, Md. The complainant Chesapeake Iron Works is a corporation, and a member of said association, engaged in the manufacture and sale of structural iron and steel. In a petition, filed October 3, 1910, it is alleged that unreasonable rates were charged the latter complainant by defendants for the transportation of certain steel girders shipped during May and June, 1910, from Baltimore to points in North Carolina and South Carolina. Reparation is asked.

The shipments, three in number, were transported by vessel from Baltimore to Pinners Point, Va., where they were delivered to the Atlantic Coast Line, which loaded them into cars and carried them to destination. The shipments consisted of two girders 26 feet in length, from Baltimore to Nashville, N. C.; two girders 23 feet in length, from Baltimore to Barnwell, S. C.; and two girders 23 feet in length, from Baltimore to Selma, N. C. The charges on each shipment were assessed in accordance with rule 26-B of the southern classification, which read as follows:

Unless otherwise specified in the classification, articles too long or too bulky to be loaded in a 36-foot box car, through a side door of the ordinary size, shall be charged at the actual weight and class rate for each article; provided, that in no case shall the charge for a shipment consisting of, or containing, such long articles loaded in one box car, or on one open car, be less than 4,000 pounds at the first class rate.

The girders were too long to be loaded through the side door of a box car 36 feet in length and the equipment of the Atlantic Coast Line Railroad did not include any box cars of greater length. An attempt was made to load the shipment consigned to Nashville through the side door of a box car, but this was found to be impossible. The box cars of the defendant railroad are equipped with a small end window for purposes of ventilation, which is protected by steel bars built into its framework. When it was found that this shipment could not be loaded through the side door, the bars were torn out from this window and the girders were loaded through that opening. This unusual method was resorted to because at the time no flat car was available. The other two shipments, being too long to load through the side door of a box car, were loaded on flat cars.

Complainants contended in the pleadings that the longer girders having been loaded in a box car the smaller girders could and should have been so loaded, and therefore the minimum of 4,000 pounds at the first class rate was improperly assessed, and that the rates applicable to iron and steel articles based on the actual weight should have been applied. At the hearing and in their brief complainants based their case upon the alleged unreasonableness of the rule rather than upon its improper application. Defendants objected to this broadening of the scope of the inquiry upon the ground that they had not been notified as to the nature of the question to be met, and had had no opportunity to prepare their defense upon this issue.

If the charges were unreasonable they were so by reason of the provisions of the rule and not because of its improper application. The petition of the complainants is for relief on account of unreasonable charges that they were compelled to pay, and this issue as to reasonableness can not be determined without a consideration of the rule. This same rule, and others of similar purport, have heretofore been condemned as to certain of their provisions, and there can be no surprise in having those provisions again brought in issue. Moreover, in the evidence and brief defendants have discussed the provisions of and the reasons for this rule.

The rule is made to meet exceptional conditions that are not met by the general provisions of the tariffs applicable to ordinary shipments. When long or bulky articles can not be loaded into box cars used to handle the customary traffic, a flat car must be added to the train for their accommodation. Ordinarily this extra car is available only for the shipment that necessitates its use. The addition of this flat car increases the weight of the train, and, owing to the incomplete loading of the car, the proportion of dead weight to revenue weight is greater than the average. Except in the weight

of the revenue load, these shipments have all the features of a carload shipment, and the car revenue is an important element in determining the reasonableness of a rate.

Considered on the basis of car revenue, the general freight agent of the defendant railroad testified that the revenue from such a shipment loaded on a flat car was slightly less than one-half that which would be received on a carload shipment of the same kind. The revenue received under the rule on each of the two shipments to North Carolina points was \$31.20. The same commodity in carload quantities between the same points would yield \$84 (30,000 pounds at 28 cents per 100 pounds). There is practical uniformity in all classifications and by all carriers as to charging the first class rate on a minimum of 4,000 or 5,000 pounds in such cases. No basis for finding such rate or minimum unreasonable is contained in this record.

There has been a general acceptance by the Commission of the principle that the rate in such cases should be sufficient to give the carrier a fair return for the use of the car, but the conditions under which this return is exacted by the carriers have been subject to criticism. This question has come before the Commission in six cases, and in four of these it has been held that the rule should not be applied when the shipment is carried in a box car. *Bennett v. M., St. P. & S. S. M. Ry. Co.*, 15 I. C. C. Rep., 301; *Brunswick-Balke-Collender Co. v. C., M. & St. P. Ry. Co.*, 18 I. C. C. Rep., 165; *Know v. W. R. R. Co.*, 18 I. C. C. Rep., 185; *Houston Structural Steel Co. v. W. R. R. Co.*, 18 I. C. C. Rep., 208. In another case the minimum weight prescribed was found to be unreasonable, but the effect of the decision was expressly limited to the particular commodity involved. *Indianapolis Freight Bureau v. C., C. & St. L. Ry. Co.*, 15 I. C. C. Rep., 370. The sixth case held that the rule should not apply to shipments that can be loaded through the side door of a box car not less than 40 feet 6 inches in length. *Jones v. S. Ry. Co.*, 18 I. C. C. Rep., 150.

The Nashville shipment was loaded and transported in a box car; but the method of loading entailed serious injury to the car and consequent expense for repairs thereto. In view of this fact we do not find that the shipment falls within the principle of the cases above cited, where the shipments covered by the rule were loaded into box cars in the ordinary manner, and without injury to the cars.

The remaining two shipments moved on flat cars, but it is the contention of complainants that they should have been carried in box cars. In *Jones v. S. Ry. Co.*, *supra*, the Commission said:

It is well known that the size and length of cars have been largely and generally increased in recent years. It would be an unusual situation if no box car longer than 36 feet was readily available at any large or important

shipping point. . . . We do not think that such a rule can reasonably apply except in instances where, because the shipment is too long or too bulky to be loaded through the side door of a box car, it is transported upon an open car.

The principle laid down by the Commission in the cases heretofore decided is that these long and bulky articles should be transported in box cars in every case where it is possible to do so, and that when so transported they shall be charged at the regular rates for less-than-carload shipments. When the shipment, solely because of its length or bulk, is actually transported on an open car, the rule applying a higher rate and minimum may be enforced.

Prior to the filing of this petition, and effective August 1, 1910, the classification rule in question was amended by omission of all reference to the size of the box car into which such articles may be loaded, and by a limitation of its operation to shipments actually loaded on an open car, and therefore no order for the future is necessary. We are unable to find that the charges assessed upon these shipments were unreasonable. It follows that the complaint must be dismissed.

22 I. C. C. Rep.

No. 3143.

SWITZER LUMBER COMPANY

v.

ALABAMA & MISSISSIPPI RAILROAD COMPANY ET AL

Submitted October 26, 1910. Decided February 12, 1912.

Complainant sold ties to the Union Pacific Railroad Company at a price f. o. b. Kansas City, Mo., and shipped them from producing points in the south, consigned to Union Pacific Railroad Company or its storekeeper, Linwood, Kans., care of that carrier at Kansas City, Mo. At the junction point, Kansas City, the Union Pacific received the ties and diverted them to destinations other than Linwood. Complainant paid the published rate (23 cents) from points of origin to Kansas City and now seeks reparation to basis of the division to Kansas City (19 cents) of the joint rate applicable from points of origin through Kansas City to Linwood. Complainant also seeks reparation based upon allegations of misrouting and of excessive rates and weights. From the facts of record, the Commission finds:

1. That the shipments not having moved in good faith to their billed destination, the published rate to Kansas City was properly imposed.
2. That the allegations of misrouting, which would have been material had the shipments actually moved to Linwood, are immaterial under the facts in this case, as all the cars were delivered to the Union Pacific at Kansas City, Mo., as routed, and the rates via all routes were the same up to Kansas City.
3. That complainant is not entitled to reparation on the ground of excessive weights because of lack of positive proof that the weights were erroneous.
4. That complainant is entitled to reparation from certain named carriers because of unjust rates up to Kansas City imposed upon certain specified shipments.
5. That the Texas & Pacific Railway Company satisfied the complaint as to five cars upon basis of the 19-cent division to Kansas City of the 24-cent rate to Linwood; and that the rate actually imposed or attempted to be imposed was the published Kansas City rate of 23 cents. No proof having been offered to show that these cars moved to Linwood, the complainant should make restitution to the Texas & Pacific Railway Company of so much of the amount of the settlement as was based upon said division.

Emerson Bentley for complainant.

W. K. Vandiver for Alabama & Mississippi Railroad Company and Mobile & Ohio Railroad Company.

V. Schaffenburg for Alabama & Vicksburg Railway Company; New Orleans & Northeastern Railroad Company; and Vicksburg, Shreveport & Pacific Railway Company.

W. F. Dickinson and *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company.

Charles E. Perkins for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

Wise, Randolph & Randall, *A. B. Freyer*, and *T. G. Beard* for Houston & Texas Central Railroad Company and Texas & New Orleans Railroad Company.

J. L. Durrett for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complainant, a corporation with principal place of business at Shreveport, La., filed this complaint on March 1, 1910. In 1907 the Chicago Lumber & Coal Company, the predecessor of the complainant, shipped numerous carloads of yellow-pine crossties from certain points in Alabama, Mississippi, Louisiana, and Texas, consigned to the Union Pacific Railroad Company, or to its storekeeper, at Linwood, Kans., in care of Union Pacific Railroad Company at Kansas City, Mo. This complaint involves 137 of these cars, concerning which informal complaints were filed with the Commission in 1909. The bases of the reparation demanded are made by allegations of misrouting, of excessive rates and weights, and of a contract for a division, as between the consignor and consignee, of the joint rate from points of origin to point of billed destination.

The contract under which the ties were furnished to the Union Pacific Railroad Company provided for delivery to that carrier free on board cars at Kansas City, Mo. The billed destination, Linwood, Kans., is a local station on the Union Pacific Railroad 28 miles west of Kansas City, and at the time the shipments moved the joint rate on yellow-pine lumber from most of the points of origin to Linwood, via Kansas City, was 24 cents per 100 pounds and this rate from some of the points applied also on yellow-pine crossties. The cars all moved to Kansas City, as routed, but there the Union Pacific refused to accept the shipments from the connecting lines on through billing to Linwood, but in every instance demanded Kansas City expense bills and in every instance the expense bills originally made out for Linwood were corrected to read Kansas City, and the published rate of 23 cents per 100 pounds from the various points of origin to Kansas City proper was in most cases applied. In no case was the rate from the point of origin to Linwood applied.

The complainant seeks reparation on the basis of the unpublished division from points of origin to Kansas City of the aforesaid joint

rate applying from said points through Kansas City to Linwood, Kans., the allegation of the complaint being that in the division of the joint rate 19 cents accrued to the carriers engaged in the transportation up to Kansas City and 5 cents accrued to the Union Pacific for the haul from Kansas City to Linwood. All of the cars were billed to Linwood, while none of them went to that place. Of the 137 cars in all, 132 were reconsigned by the Union Pacific Railroad at Kansas City to the following destinations: Forty-one to Valley, 22 to O'Fallons, 19 to Central City, 10 to Beatrice, and 11 to North Platte, in the state of Nebraska; 2 cars went to Topeka and 22 to Ellis, in the state of Kansas; 1 car appears to have gone to Aroya, Colo.; and 4 cars, so far as the evidence shows, stopped at Kansas City. As is shown hereinafter, the claims on the remaining 5 cars embraced in the complaint were settled by the Texas & Pacific Railway Company prior to the hearing.

It is apparent from the foregoing facts that the purchasing carrier, upon receipt of the shipments at Kansas City, distributed the material to various points on its own lines without regard to the billed destination. The basis of reparation demanded by complainant is a charge, or division of a joint rate, that was fixed by the carriers participating in such joint rate upon the assumption that all shipments moving thereunder would be transported in good faith to the billed destination. It is the opinion of the Commission that the published tariff rate from point of origin to Kansas City was properly imposed and that the complainant is not entitled to reparation as to this feature of its complaint. What rights, if any, the complainant may have in the courts on an action against the Union Pacific Railroad Company for breach of contract it is not incumbent on this Commission to determine.

With respect to the claim for overweight, testimony was introduced at the hearing tending to show that on a number of the shipments the carload weights upon which the rates were imposed were excessive and resulted in unjust and unreasonable total charges. The complaint alleges and the record indicates that unseasoned yellow-pine lumber will not exceed 4,500 pounds per thousand feet board measure; that these ties actually measured 7 by 9 inches by 8 feet, and that the weight of each tie should not have exceeded 189 pounds. Upon this allegation reparation is asked on 54 cars. These shipments originated at many different points and the consignor in every case was a mere agent of the contractor, the Chicago Lumber & Coal Company. No witness produced at the hearing had personal knowledge of the actual weights. The greater number of cars were check weighed en route and a careful comparison of the loads and weights of the cars upon which reparation for overweight is claimed with those upon which no such claim is made reveals the fact that with

respect to the shipments as a whole there was no overcharge because of excessive weights. The testimony as to weight is merely an approximation at best and the witness could not tell with certainty what proportion of the ties were seasoned, how many were green, or whether the ties were of heart or sap timber. Under the circumstances, the Commission can not hold that complainant is entitled to reparation under the claim for excessive weight.

Reparation is demanded by the complainant for the exaction of excessive rates upon certain shipments of yellow-pine crossties originating on the line of the Mobile & Ohio Railroad and on the line formerly known as the Mobile, Jackson & Kansas City Railroad Company, now the New Orleans, Mobile & Chicago Railroad Company.

On 5 cars from Decatur, 2 from Philadelphia, 1 from Hamlet, and 1 from Stallo, all in the state of Mississippi, a rate of 27 cents per 100 pounds was imposed for the transportation up to Kansas City, Mo. At that time there was no specific rate from these points, and although they were between Newton, Miss., and Kansas City, the tariff did not name the rate of 23 cents from Newton as applicable from intermediate stations. No justification of the higher rate from these intermediate points has been shown, and it is our opinion, and we so find, that the rate of 27 cents imposed upon these 9 carload shipments was unreasonable and excessive in and to the extent that it exceeded a rate of 23 cents per 100 pounds; and that the complainant has been damaged to the extent of the difference between these two rates as applied to such shipments and is entitled to reparation in the amount of such difference. In view of the fact that the reduced rate has been in effect for more than two years, and is still in force, no order with respect to the maintenance thereof will be made.

Reparation in the sum of \$203.32, with interest from October 1, 1907, will be awarded against the New Orleans, Mobile & Chicago Railroad Company and the St. Louis & San Francisco Railroad Company for overcharges on the following described shipments:

M.
P. I.
Pro
M.
R. I.
M.
C. I.
H.
K.

Through error the expense bills covering these cars show point of origin as New Albany. Informal complaints covering all the ship-

ments were filed with the Commission within the limitation period of two years named in the act.

From Russell and Reform, Ala., and Quitman, Miss., to Kansas City, Mo., complainant shipped four carloads of yellow-pine crossties on which charges were collected in excess of the yellow-pine lumber rate of 23 cents per 100 pounds in force at the time of movement. The Commission has uniformly held that rates on crossties should not exceed the rates on rough lumber of the same description. This conclusion is here reiterated and the defendant carriers will be required to establish rates for the future for the transportation of crossties in accordance therewith. Reparation will be awarded on basis of the yellow-pine lumber rate as applied to the following described shipments, upon which complainant paid rates herein found to have been unreasonable:

On Lake Shore & Michigan Southern car No. 47751, from Russell to Kansas City, charges of \$132.15 were collected on November 5, 1907, on a weight of 53,100 pounds. On Rock Island car No. 56576, from Quitman to Kansas City, charges of \$125.18 were collected on October 30, 1907, on a weight of 52,200 pounds. On Illinois Central car No. 15548, from Quitman to Kansas City, charges of \$126.15 were collected on December 12, 1907, on a weight of 53,700 pounds.

On these three shipments refund should be made by the Mobile & Ohio Railroad Company, St. Louis & San Francisco Railroad Company, and Chicago, Rock Island & Pacific Railway Company in the following amounts, respectively: \$10.02, with interest from November 5, 1907; \$5.22, with interest from October 30, 1907; and \$2.64, with interest from December 12, 1907.

Charges of \$136.30 on a weight of 58,000 pounds were collected July 3, 1907, on Missouri, Kansas & Texas car No. 15386, from Reform to Kansas City. On this shipment the overcharge of \$2.90, with interest from July 3, 1907, should be refunded by the Mobile & Ohio Railroad Company and the Missouri, Kansas & Texas Railway Company.

Informal complaints covering these four shipments were filed with the Commission within the statutory period. On Mobile & Ohio car 9440, which moved from Reform to Kansas City, a rate of 26 cents was imposed and charges amounting to \$156.75 were collected on May 25, 1907. The informal complaint covering this car was not filed until June 5, 1909, more than two years after the cause of action accrued, and consequently no award of reparation can be made by the Commission.

Prior to the hearing the Texas & Pacific Railway Company made settlement with the complainant on five cars shipped from Lena, La., the charges having been imposed under the Kansas City rate of 23

cents. This settlement was on the basis of the 19-cent division of the 24-cent rate to Linwood, Kans., and would seem to have been erroneously made, as the imposition of the 23-cent rate indicates that at Kansas City these cars were treated by the consignee, the Union Pacific Railroad Company, in the same manner as it treated the rest of the 137 cars. On one of these cars 33 cents per 100 pounds was collected in error for 23 cents and on this car there was a clear overcharge of 10 cents per 100 pounds on 68,360 pounds, or \$68.36. No proof with respect to these shipments was introduced at the hearing, but from exhibits in the docket we assume that the settlement involved a payment to complainant by the Texas & Pacific Railway Company of \$191.79. Deducting from this amount the straight overcharge of \$68.36 leaves a net undercharge of \$123.43, which the complainant should return to that carrier.

An order in accord herewith will be issued.

22 I. C. C. Rep.

No. 3340.

VULCAN IRON WORKS COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted April 7, 1911. Decided February 5, 1912.

Fifth class rate of 63 cents per 100 pounds on shipments of iron bars, steel bars, steel plates, steel sheets, and structural steel (not fabricated), in carloads, from St. Louis, Mo., and other Mississippi River crossings taking same rate to Denver, applicable to through shipments originating at Pittsburgh, Pa., and other points of production east of the Mississippi River, found to be unreasonable and unjustly discriminatory. Rates of 52 cents on iron bars and steel bars and 43 cents on steel plates, steel sheets, and structural steel (not fabricated), prescribed for future.

Dayton & Denious for complainant.

R. G. Merrick for Atchison, Topeka & Santa Fe Railway Company.

Hale Holden, E. E. Whitted, and R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

Wallace T. Hughes, W. F. Dickinson, and F. J. Shubert for Chicago, Rock Island & Pacific Railway Company.

E. E. Whitted for Colorado & Southern Railway Company.

E. N. Clark, James C. Jeffery, and H. J. Campbell for Denver & Rio Grande Railroad Company.

James C. Jeffery, H. J. Campbell, and D. R. Lincoln for Missouri Pacific Railway Company.

F. C. Dillard, N. H. Loomis, J. A. Munroe, and C. C. Dorsey for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant corporation is engaged at Denver, Colo., in the manufacture of various articles from iron bars, steel bars, steel plates, steel sheets, and structural steel (not fabricated).

Among its manufactured products are mining machinery, hoisting engines, ore cars, ore buckets, pit cars, smokestacks, steel-riveted pipe, iron and steel tanks, also frogs, switches, and other supplies for steam and electric railways. The material employed originates east of the

Mississippi River, much of it at Pittsburgh, Pa. The rate from Pittsburgh bases on the Mississippi River, the present factors being 22½ cents to the river and the fifth class rate of 63 cents beyond.

At the time the complaint was filed the fifth class rate west of the river was 72 cents, but in the case of *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C. Rep., 555, it was reduced to 63 cents. It is this rate west of the river which is attacked in this proceeding as unreasonable and unduly prejudicial as applied to the iron and steel articles from which complainant's products are manufactured. We are asked to prescribe a maximum rate not to exceed 40 cents.

The short-line distance from St. Louis to Denver is 916 miles. The distance from St. Louis to Salt Lake City is 1,451 miles and the rate \$1.05 on iron and steel bars and 87½ cents on steel plates, sheets, and structural steel. The fifth class rate from St. Louis to Salt Lake City is \$1.28. The distance from Denver to Salt Lake City is 627 miles, the rate 52 cents on iron and steel bars, plates, and sheets, 41 cents on structural steel, and the fifth class rate 79½ cents.

It will thus be seen that while the fifth class rate is charged from St. Louis to Denver, the rate from St. Louis to Salt Lake City is from 68 to 82 per cent, and from Denver to Salt Lake City from 51 to 65 per cent of the fifth class rate between the same points. Much of the iron and steel destined to Salt Lake City passes through Denver en route.

Iron and steel bars and plates are also alleged to be improperly classified with various commodities enumerated in the petition, and more particularly with respect to certain articles made from these materials or with which the manufactured products come into direct competition. Complainant contends that by reason of this rate adjustment it is prejudiced to the extent that it has to pay a higher rate upon the material from which such products are manufactured than is charged upon the products themselves. The following table, filed by complainant, shows rates on a number of such articles from Mississippi River points to Denver:

Article.	Rate per 100 pounds.	Minimum carload weight.
	Cents.	Pounds.
Wrought iron or steel pipe	45	44,000
Welded iron or steel pipe	45	44,000
Seamless iron or steel pipe	45	44,000
Cast-iron pipe connections	45	36,000
Cast-iron pipe fittings	45	36,000
Iron valves	45	44,000
Iron boiler tubes	45	44,000
Steel drill rods	45	44,000
Pipe screws	45	44,000
Iron or steel poles for telegraph, telephone, and electric street railways	45	44,000
Railway material	57	36,000
Turntables	57	36,000
Track fastenings	25	44,000
Steel cross-tie fastenings	25	44,000
Steel cross-ties	22 ½	44,000

The only evidence introduced by the carriers was in the nature of cross-examination intended to show that the Denver manufacturer can successfully compete with the finished article from the east. The substance of this cross-examination was, in the main, that as to many of its products complainant is on an equality as to Denver proper but can not reach distributing territory farther west.

The minimum weight on these bars and plates is 36,000 pounds, but the usual loading is greatly in excess of the minimum. Frequently there are 60,000 pounds and more in a single car. Complainant does not object to a substantial increase in the minimum weight.

Upon consideration of the whole record we find that the rate of 63 cents per 100 pounds on iron bars, steel bars, steel plates, steel sheets, and structural steel (not fabricated) is unreasonable and unduly prejudicial. Defendants' present rate from the Mississippi River to Salt Lake City on iron and steel bars is 82 per cent of their fifth class rate to the same point, and their rate to Salt Lake City on steel plates, steel sheets, and structural steel (not fabricated) is 68 per cent of the fifth class rate. Allowing them similar percentages of the fifth class rate to Denver, their rates for the future ought not to exceed 52 cents per 100 pounds on iron and steel bars and 43 cents per 100 pounds on steel plates, steel sheets, and structural steel (not fabricated).

There is suggested the question of our jurisdiction to enter an order because the lines from Pittsburgh and other eastern territory of production to the Mississippi River are not named as defendants. While these carriers are proper parties, they are not essential to the validity of an order directed to a separately established part of the through charge.

An order will be entered accordingly.

22 L. C. C. Rep.

No. 3417.
CHATTANOOGA FEED COMPANY
v.
ALABAMA GREAT SOUTHERN RAILROAD COMPANY.

Submitted April 17, 1911. Decided February 12, 1912.

Rates charged by defendant for the transportation of grain in any quantity and hay in carloads and less than carloads from Chattanooga, Tenn., to Collinsville and other points in Alabama, found to be unreasonable, and lower rates prescribed for the future.

Francis Martin for complainants and interveners.
R. Walton Moore for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainants, G. B. Glenn, Miss Sallie Glenn, Mrs. A. J. Glenn, and Harry Winer, are partners under the name of Chattanooga Feed Company, engaged in the wholesale grain and feed business at Chattanooga, Tenn. By petition, filed July 25, 1910, they assail as unreasonable and unduly discriminatory the rates on grain and hay from Chattanooga, Tenn., to Fort Payne, Collinsville, and other points in Alabama, on the line of the Alabama Great Southern Railroad.

By southern classification grain, in any quantity, and hay in carloads are rated class D. Hay in less than carloads is rated fifth class. The rates charged by defendant for the transportation of grain in any quantity, and hay in carloads, from Chattanooga to the points in question, so far as specifically named in the petition, are as follows: To Batelle, a distance of 34 miles, 10½ cents per 100 pounds; to Fort Payne, a distance of 51 miles, 13½ cents per 100 pounds; to Collinsville, a distance of 66 miles, 15 cents per 100 pounds; and to Attalla, a distance of 87 miles, 11 cents per 100 pounds. The rates on hay in less than carloads are: To Batelle 18 cents, to Fort Payne 24 cents, to Collinsville 27 cents, and to Attalla 27 cents per 100 pounds.

Chattanooga is a junction point between the Cincinnati, New Orleans & Texas Pacific Railway and the Alabama Great Southern,
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336 miles south of Cincinnati, Ohio, and 316 miles south of Louisville, Ky. It is also a junction point between the Nashville, Chattanooga & St. Louis Railway and the Alabama Great Southern. The distance from Nashville to Chattanooga is 151 miles.

The tariffs show that joint through class rates applicable on grain in any quantity, and on hay in carloads and less than carloads, are maintained by defendant and its connecting lines from Cincinnati, Louisville, and Nashville, via Chattanooga, to all the destination points in question. Collinsville may be taken as fairly representative of such points. The rate on grain in any quantity and hay in carloads to Collinsville from Cincinnati and Louisville is 24 cents per 100 pounds, and from Nashville 17 cents per 100 pounds. On the same commodities the rate to Chattanooga is 21 cents, from Cincinnati and Louisville, and 16 cents from Nashville. On hay in less than carloads the joint through rate to Collinsville is 52 cents from Cincinnati and Louisville, and 34 cents from Nashville; and the rate to Chattanooga is 38 cents from Cincinnati and Louisville, and 24 cents from Nashville.

It thus appears that as to grain in any quantity and hay in carloads the rate from Cincinnati and Louisville to Collinsville is but little more than one and one-half times the rate from Chattanooga to Collinsville, whereas the distance from Cincinnati to Collinsville is over five times as great, and from Louisville it is more than four and one-half times as great; and the rate from Nashville to Collinsville is less than one and one-seventh times the rate from Chattanooga to Collinsville, whereas the distance from Nashville is about three and one-third times as great. It is also to be observed that as to grain in any quantity and hay in carloads the rate from Cincinnati and Louisville to Chattanooga is only 3 cents less than the rate from those points to Collinsville, and from Nashville to Chattanooga the rate is only 1 cent less than from Nashville to Collinsville. As to hay in less than carloads there is a difference in the rate in favor of Chattanooga of 14 cents per 100 pounds from Cincinnati and Louisville, and of 10 cents per 100 pounds from Nashville.

Complainants allege that the rates from Chattanooga are in themselves unreasonable, and that as compared with the rates from Cincinnati, Louisville, and Nashville to the same destination points their effect is to subject complainants and other wholesale dealers in grain and hay at Chattanooga to unjust discrimination and undue and unreasonable prejudice and disadvantage. They further allege that the less-than-carload rates on hay, as compared with the carload rates, subject small dealers to unjust discrimination in favor of wholesale dealers in that traffic.

At the hearing the Shelton Grain & Feed Company, Stegall Feed Company, C. R. Baird & Company, and Wheeler & Company, firms

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at Chattanooga engaged in the grain and hay business, were allowed to intervene. The evidence submitted by them has been considered with the other evidence in the case, the same as though the intervening parties had been original complainants. The issue involves rates from Chattanooga to all points on defendant's line south of Chattanooga and north of Attalla. Though included in the petition, Attalla is not one of the points to which rates are assailed by the evidence. It is a junction point between the Alabama Great Southern, the Louisville & Nashville, and the Nashville, Chattanooga & St. Louis, and the rates are lower than to other points north thereof on defendant's line. The defendant, while not disputing that the rate situation is as above set forth, denies that the rates complained of are either unreasonable or discriminatory.

It can not be doubted that Chattanooga's proximity to the consuming points in question makes it a natural supply center for those points. But the testimony is to the effect that under the present rate situation Chattanooga merchants are unable to do business at said points. A retail dealer at Fort Payne testified that he obtained his supply of corn and oats from Nashville for the reason that he could buy from that point at a delivered price cheaper than he could buy the same commodities f. o. b. Chattanooga. He further stated that he had observed quotations on hay from Nashville from 50 cents to \$1 per ton lower, delivered at Fort Payne, than he could buy hay f. o. b. at Chattanooga.

The testimony of other witnesses for complainants is generally to the effect that merchants at Chattanooga are unable to sell to dealers at the consuming points in question because the rates out of Chattanooga are prohibitive; that under the existing rate adjustment dealers at those points, and at other points in the same territory, whether in carload or less-than-carload quantities, can and do buy their supplies from merchants at Nashville at delivery prices lower than the prices at which Chattanooga merchants can afford to sell.

As already indicated, the Nashville, Chattanooga & St. Louis and the Louisville & Nashville both have connections with defendant's line at Attalla, but shipments of grain and hay in carloads from Cincinnati, Louisville, and Nashville to the southeastern markets generally move via Chattanooga. The practical operation of the present rate adjustment is that merchants at Cincinnati, Louisville, and Nashville ship their grain in any quantity, and hay in carloads, via Chattanooga to the points here in question at a rate of 24 cents from Cincinnati and Louisville, and a rate of 17 cents from Nashville. The rates into Chattanooga are 21 cents from Cincinnati and Louisville, and 16 cents from Nashville, while the rate out of Chattanooga to Collinsville, which we again take as a representative point for the purpose of illustration, is 15 cents. The disadvantage to merchants at Chattanooga in the matter of rates to the

consuming markets, as compared with merchants at Cincinnati, Louisville, and Nashville, is thus clearly shown. They all buy originally from the same general sources of supply, namely, the producing centers of the west and northwest. As before shown, the through rate on shipments from Cincinnati and Louisville to Collinsville is only 3 cents over the Chattanooga rate, and from Nashville only 1 cent over the Chattanooga rate. The same relative situation is true of the rates from Ohio River crossing other than those mentioned.

The tariffs on file with the Commission show that the rates out of Chattanooga via other lines to the south, namely, the Western & Atlantic Railway, the Central of Georgia, and Chattanooga Southern, to points of about the same distances from Chattanooga, are considerably lower than the rates here complained of. A few examples will illustrate the general situation: The class-D rate from Chattanooga via the Western & Atlantic to Adairsville, Ga., a distance of 68.4 miles, is 9 cents per 100 pounds, whereas the class-D rate from Chattanooga to Collinsville, a distance of 66 miles, is 15 cents per 100 pounds; and via the Central of Georgia the rate from Chattanooga to Lavendar, Ga., a distance of 67.2 miles, is 9 cents per 100 pounds. On the Chattanooga Southern the class-D rate from Chattanooga to Blue Pond, Ala., a distance of 69 miles, is 11 cents per 100 pounds. These rates apply on both grain and hay in any quantity, except as to the Central of Georgia, where hay in less than carloads is not included. The Chattanooga merchants do a large business in the territories served by those lines. Complainants insist that the rates to the points on the Alabama Great Southern should be upon the same relative basis.

The defendant contends that the rates of the Western & Atlantic, Central of Georgia, and Chattanooga Southern are to a greater or less extent under the control of the states of Georgia and Alabama, and that the rates out of Chattanooga to points on those lines are influenced, if not largely dominated, by that fact. It is accordingly insisted that a comparison of those rates with the rates under attack should not be regarded as of material importance. On the question of state control and its probable effect the record is not definite or clear; but whatever the fact may be, it does not appear that the conditions in this respect differ materially as between the lines referred to and the Alabama Great Southern. In other words, if it be true that the rates out of Chattanooga to points on the lines of Western & Atlantic, Central of Georgia, and Chattanooga Southern are influenced by the fact that local rates on the same lines are subject to state control, no satisfactory reason is shown why the same result would not obtain as to the Alabama Great Southern, whose line passes through portions of both said states. The Western & Atlantic

is leased and operated by the Nashville, Chattanooga & St. Louis, and the rates are published by the latter line.

The rates complained of have been in effect without material change for many years, and of course that fact is of weight in favor of the view that they are reasonable. It is doubtless true, also, that the rates are adjusted with reference to rates to other points on defendant's line, for which reason it is urged that any reduction in them would affect the entire adjustment and would be productive of complaints from other junction points. That these matters are of importance and entitled to careful consideration is not disputed. It is explained that the reason for the less-than-carload rate on hay, and not on grain, is that hay weighs only one-third as much as grain and occupies twice the space, so that for the same amount of car space the revenue on grain is much greater than on hay. The distinction appears to have been in force for many years.

The evidence shows that in the division of the joint through rate from the Ohio River crossings and from Nashville, via Chattanooga, to the points in question the share of the Alabama Great Southern is generally the equivalent of and sometimes more than its local rates out of Chattanooga to the same points. According to defendant's testimony, on a shipment from Cincinnati, Louisville, or Cairo to Collinsville out of the through rate of 24 cents, the Alabama Great Southern gets 15 cents for a haul of 66 miles, and the connecting carrier or carriers get 9 cents for a haul of 336 miles if from Cincinnati, or 316 miles if from Louisville, or 446 miles if from Cairo; and on a shipment from Nashville to Collinsville out of the through rate of 17 cents the Alabama Great Southern gets 15 cents for a haul of 66 miles and the originating carrier gets 2 cents for a haul of 151 miles. In other words, the Alabama Great Southern demands its full local out of the joint rate on the through shipments from the Ohio River crossings or from Nashville. And as to Valley Head, which is one of the points here involved, 40 miles distant from Chattanooga, it appears that the Alabama Great Southern gets half of the through rate of 24 cents from the Ohio River crossings, whereas its local rate out of Chattanooga is 10½ cents.

In the testimony of record objection is made to the existence at Nashville of what is termed a reshipping or rebilling privilege under which grain and hay moving from Ohio and Mississippi river crossings through Nashville may be unloaded at that point and held for a given length of time and then reshipped on at the through rate from point of origin to destination. This privilege, it is stated, operates to the undue advantage of Nashville merchants and to the disadvantage of merchants at Chattanooga, where no such arrangement exists. There is no attack in the petition, however, upon the rebilling ar-

F. C. Baird for Bessemer & Lake Erie Railroad Company.

R. Walton Moore and *E. C. Blanchard* for Virginia & Southwestern Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; and others.

REPORT OF THE COMMISSION.

LANE, Commissioner:

This case involves the reasonableness of new individual and joint rates and charges for the transportation of iron and steel articles, as well as the regulations and practices affecting such rates and charges, as published in the following-named tariffs filed with this Commission to become effective November 1, 1911:

Baltimore & Ohio Railroad Company, supplement No. 12 to I. C. C. No. 9715; Bessemer & Lake Erie Railroad Company, I. C. C. No. 258; Erie Railroad Company, I. C. C. No. A-4423; Lake Shore & Michigan Southern Railway Company, supplement No. 26 to I. C. C. No. A-2513; Grand Trunk Railway system, supplement No. 17 to I. C. C. No. 871; New York, Chicago & St. Louis Railroad Company, I. C. C. No. 3139; Michigan Central Railroad Company, I. C. C. No. 4041; Pennsylvania Railroad Company, J. J., I. C. C. No. 294; Pennsylvania Company, I. C. C. No. F-341; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, I. C. C. No. P-352; Pittsburgh & Lake Erie Railroad Company, supplement No. 6 to I. C. C. No. 1382; J. F. Tucker, agent, I. C. C. No. 274; Wabash Railroad Company, I. C. C. No. 2879; Wabash Pittsburgh Terminal Railway, West Side Belt Railroad, supplement No. 7 to I. C. C. No. 130; Pennsylvania Company, supplement No. 28 to I. C. C. No. F-218; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, supplement No. 29 to I. C. C. No. P-191; Pere Marquette Railroad Company, I. C. C. No. 2729 (effective November 6, 1911); Norfolk & Western Railway Company, supplement No. 15 to I. C. C. No. 3454; Chesapeake & Ohio Railway Company, supplement No. 8 to I. C. C. No. 4658; and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, supplement No. 30 to I. C. C. No. P-191.

By orders of this Commission the effective date of these tariffs was postponed until February 29, 1912.

On this matter being called for hearing the defendants presented one witness, who frankly said that he did not presume to defend the case entirely. No briefs have been filed, and the case has practically gone by default. In view of the insufficiency of the evidence presented to sustain the reasonableness of the advanced rates proposed herein, the Commission will order the maintenance of the present rates.

No. 3920.

INTERNATIONAL AGRICULTURAL CORPORATION
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL

Submitted January 10, 1912. Decided February 5, 1912.

Present rates for the transportation of sulphuric acid in carloads from Copperhill, Tenn., to certain points in North Carolina, South Carolina, Georgia, and Florida, found to be unreasonable, and lower maximum rates prescribed for the future. Reparation awarded.

White & Case, C. A. Severance, C. J. Fay, and I. S. Olds, for complainant.

R. Walton Moore and F. W. Gwathmey for defendants.

A. S. Brandeis for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman*:

The complainant is engaged, among other things, in the manufacture and distribution of fertilizer throughout the south and southeast. In the prosecution of this enterprise it uses large quantities of sulphuric acid, which it obtains at Copperhill, Tenn., a station upon the Louisville & Nashville Railroad. Its complaint is that the rates exacted by the defendants for the transportation of this commodity are unreasonable and discriminatory.

The principal ingredients used by the complainant in the manufacture of its fertilizer are phosphate rock and sulphuric acid. The phosphate rock can be obtained either in South Carolina, Florida, or Tennessee. It was said that the South Carolina rock was only used in the vicinity of Charleston, near the locality where it is found, but that the Florida rock and the Tennessee rock competed freely throughout the whole south.

In the manufacture of fertilizer the rock is ground and combined with sulphuric acid in equal parts, the process being known as "acidulating" the rock, and the product designated as acid phosphate. The cost of manufacture, not including the cost of the materials, is approximately \$3 per ton. This process of acidulation can be carried on wherever the rock and the sulphuric acid can be most cheaply and conveniently brought together.

The fertilizer itself is manufactured by adding to the acid phosphate certain other ingredients which are necessary to give to the fertilizer the proper qualities, but which are insignificant in bulk as compared with the rock and the sulphuric acid. These substances

are, for the most part, potash or nitrate of ammonia, which are brought in from abroad, and the offal of slaughter houses known as tankage, which is obtained in this country.

Throughout the south what is known as mixing is practiced. The local dealer buys the acidulated rock and adds to it, in such proportions as he sees fit, the other ingredients. This can be done with comparatively inexpensive machinery, and the product is substantially as good as the ordinary commercial fertilizer; indeed, it is, to every intent, commercial fertilizer. These mixing operations are carried on quite extensively at many points in the south.

The sulphuric acid used in the south has been until recently mainly produced from iron pyrites. Suitable pyrites is found at one or two places in the United States, but the bulk is imported from Spain.

For the manufacture of sulphuric acid from pyrites a somewhat expensive plant is required. To produce 10,000 tons of 50-degree acid yearly requires an investment of from seventy-five to eighty thousand dollars. The testimony shows that the cost of producing 50-degree acid in a plant of this size is about \$4.50 per ton. It is probable that when produced upon a larger scale the cost is somewhat less.

As a rule, sulphuric acid is manufactured from pyrites at the point where it is intended for use. Generally, the whole process of manufacturing the fertilizer is conducted at one plant, although sometimes the plant is merely used for the acidulation of the rock.

Sulphuric acid in the past has been produced from iron pyrites, to a limited extent, at Grasselli, near Birmingham, Ala. Some sulphuric acid has also found its way from Kansas and Missouri, where it is produced in the process of mining zinc; but of late years only a limited quantity has been derived from this source.

Extensive copper-smelting operations are conducted by the Tennessee Copper Company at Copperhill and Ducktown, Tenn., located upon the Louisville & Nashville Railroad. That company, finding itself under the necessity of consuming, in some way, the sulphur fumes which were thrown off in its operations and which were destroying vegetation in that vicinity, began to convert these fumes into sulphuric acid and had so far perfected its operations that in the early part of 1908 it was producing that article in very considerable quantities. About that time one Chisholm entered into a contract with the Tennessee Copper Company to take its product of sulphuric acid of the strength of 60 degrees for something over \$5 per ton. Having made this contract, he proceeded to erect in the south two factories for the acidulation of phosphate rock and the manufacture of fertilizer.

The complainant corporation was organized in 1909 with a view, apparently, to taking over this contract for sulphuric acid with the

Copperhill company. It paid for the contract and the two plants the sum of \$1,000,000, the plants being appraised at \$300,000 and the contract being carried as an asset of \$700,000.

In the acidulation of phosphate rock acid is used at 50-degree strength. The complainant adds one-fifth water to the acid as shipped from Copperhill before using it for the purpose of acidulation. The price of this acid reduced to a 50-degree basis is therefore slightly over \$4 at Copperhill, which is something less than the cost of acid from pyrites at the seacoast.

In manufacturing acid from pyrites at interior points the pyrites must be freighted by rail from the port of import to the interior destination, and the cost of the acid at the interior point is increased by the amount of the freight on the pyrites. One ton of pyrites, containing the ordinary quantity of sulphur, makes something over two tons of sulphuric acid, so that the cost per ton of acid from pyrites increases as the coast is receded from by about one-half the freight per ton on pyrites to the interior point.

The cost of sulphuric acid to the complainant at any point is the price at Copperhill plus the freight from Copperhill. The cost of sulphuric acid to the competitor of the complainant is the cost of producing it at the seacoast plus the rate upon the pyrites for its manufacture. The cost of phosphate rock at a given point is approximately the same to the complainant and to its competitor. Whether the complainant or its competitor can produce acidulated rock at the lower figure depends therefore upon the rate imposed upon sulphuric acid from Copperhill as compared with the rate on pyrites from the port of import. The complainant insists that its rates on the acid are higher than those on pyrites, and that this is an unjust discrimination, and it further insists that the acid rates are unreasonable considered in and of themselves.

The complainant specifies certain points in the south to which it has shipped or will in the immediate future desire to ship sulphuric acid from Copperhill. The following table names these points, giving the short-line mileage, the present rate and rate per ton-mile, and the rate asked for by the complainant with the rate per ton-mile:

Points.	Mileage.	Present rates.		Rates asked.	
		Per short ton.	Per ton-mile.	Per short ton.	Per ton-mile.
			(Cont.)		(Cont.)
Athens, Ga.	254	\$2.60	.01024	\$2.00	.00775
Augusta, Ga.	346	3.00	.00942	2.25	.00652
Columbia, S. C.	409	4.00	.00977	2.75	.00672
Dublin, Ga.	327	3.00	.00917	2.25	.00644
Greenville, S. C.	336	4.00	.01190	2.50	.00744
Hartsville, S. C.	515	4.25	.00825	3.00	.00642
Laurens, S. C.	404	4.50	.01103	2.75	.00674
Macon, Ga.	273	2.65	.00970	2.00	.00732
Savannah, Ga.	449	3.25	.00723	2.50	.00546
Spartanburg, S. C.	306	4.00	.01311	2.50	.00819
Wilson, N. C.	556	4.25	.00765	2.00	.00540

The following table states certain points with the same information to which the complainant would desire to make shipments provided a rate were established under which that could be profitably done:

Points.	Mileage.	Present rates.		Rates asked.	
		Per short ton.	Per ton-mile.	Per short ton.	Per ton-mile.
			<i>Cents.</i>		<i>Cents.</i>
Columbus, Ga	303	\$5. 70	.01881	\$2. 00	.00660
Brunswick, Ga	460	5. 45	.01184	2. 50	.00543
Charleston, S. C	494	6. 65	.01346	2. 50	.00506
Jacksonville, Fla	514	5. 45	.01060	2. 50	.00486
Wilmington, N. C	568	7. 25	.01276	2. 50	.00440

We are asked by the complainant to establish reasonable rates to the points named in both the above tables.

The complainant insists, as already suggested, that the rates on sulphuric acid should be made to correspond with those on pyrites. This the defendants resist upon the ground that even if the two commodities are competitive to such a degree that the rates if voluntarily made should correspond, still the rates on pyrites in this southern territory are not voluntary and must not be taken as the standard of comparison.

The case shows that the only use to which pyrites is put in this southern territory to any considerable extent is the manufacture of sulphuric acid. Since the pyrites used for this purpose is almost entirely of foreign origin, it can be owned more cheaply at the coast ports than at interior points.

While the phosphate rock of Tennessee is located in the interior and not accessible to water transportation, that of Florida is virtually upon the ocean, and this fact tends to give it a better rate, mile for mile, to coast points than to interior destinations.

The fact that both the sulphuric acid and the phosphate rock can be obtained cheaper at the coast than at the interior has tended to build up the manufacture of fertilizers at the coast, although this tendency is neutralized by the fact that the cost of distribution is often greater.

For the purpose of stimulating the production of fertilizer at interior points and reducing the cost to the farmer, the railroad commission of Georgia many years ago established low rates upon pyrites between Georgia points. The state commission rate from Brunswick to Atlanta is \$1.84 per net ton for a distance of 275 miles.

Pyrites is usually imported in cargo lots and can therefore be brought in through almost any of the southern ports. The handling of fertilizer is an important part of the traffic of many southern lines, running in some cases as high as 15 per cent of the total freight

revenues. Naturally, different lines desired to protect their traffic and respective industries, and were compelled in order to do this to make rates through other ports and to various points corresponding with the Brunswick-Atlanta rate.

The defendants urge that all these pyrites rates in the south are but a reflection of this original rate and that they are all unduly low. It seems apparent that these rates have been the product of active competition to such an extent that they are not in a sense voluntary. They should hardly be used as standards of comparison in establishing rates on sulphuric acid, nor should carriers be required to maintain less than reasonable rates for the purpose of putting the rates on sulphuric acid upon a parity in all cases with rates upon pyrites. If a particular case should arise where the same carrier was unduly discriminating between these two commodities, that should be dealt with by itself.

The real question before us is upon the reasonableness of these sulphuric acid rates. We have already seen that the ingredients out of which this fertilizer is manufactured can be brought together at almost any point. New plants are being frequently established, and under the circumstances we must fix rates on this commodity which are fair, having reference mainly to the length of the haul and the cost of the service, and under these rates the various contending interests must operate.

Sulphuric acid is transported in tank cars which contain from 50 to 55 tons. The records of the Southern Railway show that the average loading upon that line has been about 43 tons, but this loading will be increased in the future.

These cars are mainly owned by the complainant, and in the future practically all the equipment used will be provided by it either by ownership or by lease. The various carriers pay to the complainant for the use of this equipment three-fourths of 1 cent per mile in both directions.

The cars are invariably returned empty. It was said that special expedition was required in the handling of this traffic, but whatever necessity of that kind has existed in the past has been due mainly to lack of equipment, and the indications are that this same trouble will not be experienced in the future. We do not fix these rates upon the theory that this traffic requires an expedited service, and the defendants should not feel required to give it that service.

The movement is uniform. Somewhat less sulphuric acid is produced during the summer than during the other months of the year, for some reason, but the quantity which will be offered for shipment is known with substantial accuracy from week to week, and from day to day.

Liability to loss and damage is extremely small; nor does it appear that there is any danger of damage to the carriers' property from leakage or otherwise. The volume of this traffic is comparatively large, being at the present time nearly 250,000 tons per year, with a considerable prospective increase. On the whole, the movement of this acid affords the carriers a very desirable business.

There has been a good deal of negotiation between the complainant and the various defendants looking to the establishment of rates upon this commodity. As a result of the discussion the carriers seem finally to have taken the position that rates on sulphuric acid should be substantially the same as the fertilizer rate, upon the theory, apparently, that the completed fertilizer comes into competition with the acid.

To this idea we can not subscribe. So far as the case shows, fertilizer does not compete with sulphuric acid nor is it manufactured at the point where this acid originates. The value of the fertilizer distributed throughout the south is from \$15 to \$20 per ton at the plant. The value of this sulphuric acid is \$5 per ton at the point of origin. It is strictly a raw material and we think that distinctly lower rates should be applied for the transportation of these commodities from the point of origin to point where they are finally used than that upon the manufactured fertilizer.

The value of sulphuric acid at Copperhill is about the same as the value of phosphate rock in Tennessee or in Florida at the mine, and there is no apparent reason why substantially the same rate of transportation ought not to be applied. The loading of sulphuric acid is heavier than that of the rock, but, upon the other hand, the tank car always returns empty, while the box car in which the phosphate rock is transported may, and perhaps usually does, take a return load.

The carriers object that their rates in the south upon phosphate rock ought not to be made the standard by which to fix reasonable rates upon this acid, since those rates, owing to the locality in which phosphate rock is found, have been in all parts of the south highly competitive, and this seems to be true. We found in examining rates from the Tennessee mines to points in central freight association territory that rates to the north upon this particular commodity were often higher than those to the south, although the general level of rates was lower. There is much force in the contention that the rates to be fixed upon sulphuric acid from Copperhill to these points in the south may well be somewhat higher than those now in effect for the movement of phosphate rock into this same territory.

Upon careful consideration, we are of the opinion that the rates named in the table following are reasonable for the transportation of sulphuric acid in carloads from Copperhill, Tenn., to the points

named, and ought not to be exceeded. These rates are for a net ton of 2,000 pounds, minimum carload 40 tons.

FROM COPPERHILL, TENN.

To—	Rate per net ton.
Athens, Ga.	\$2.20
Augusta, Ga.	2.80
Dublin, Ga.	2.65
Macon, Ga.	2.80
Columbus, Ga.	2.50
Brunswick, Ga.	3.40
Columbia, S. C.	3.15
Greenville, S. C.	2.70
Hartsville, S. C.	3.70
Lancaster, S. C.	3.15
Spartanburg, S. C.	2.50
Charleston, S. C.	3.50
Wilson, N. C.	3.85
Wilmington, N. C.	3.95
Jacksonville, Fla.	3.65

It will be noted that the Commission has declined to reduce the present rate to Savannah, Ga., and has established rates to Brunswick, Charleston, Jacksonville, and Wilmington, considerably higher than those prayed for by the complainant. These points are all upon the coast. Their distance from Copperhill exceeds that to interior points to which the complainants concede the propriety of a higher rate. The demand for the lower rate is based upon the idea that sulphuric acid from Copperhill can not compete with sulphuric acid from pyrites at these points upon what would otherwise be a normal rate, and that we should therefore establish a rate sufficiently low to permit of such competition.

While carriers in the past have often adopted this policy in the naming of their rates, and while this Commission might perhaps under the same circumstances require the maintenance of such rates when once voluntarily established, we do not feel that we can consistently initiate rates upon this theory. As already said, these different manufacturers of fertilizer and the different localities interested should be given a fair and just rate, having reference largely in this case, to the cost of the service, and should be allowed to enjoy whatever advantage of location they may possess.

The complainant asks reparation on account of certain shipments made in the past upon which the present or higher rates were charged.

The case discloses that this complainant has been in active negotiation with the defendants for a reduction of these rates ever since it

began the transportation of sulphuric acid from Copperhill. Some of the rates have been already reduced and others, as we understand the testimony, are confessedly, from the carrier's standpoint, too high. We think that, under the circumstances, it must be held that the rates charged have been excessive in so far as they exceeded those rates now found by us to be reasonable, and reparation will be awarded accordingly.

If the parties agree as to the amount of reparation due under the above findings and stipulate to that amount, orders will be issued permitting and directing payment. Otherwise, the complainant may apply for a further hearing upon that branch of the case. An order will at once be issued establishing the rates found to be reasonable.

22 I. C. C. Rep.

No. 1239.

TRAFFIC BUREAU, MERCHANTS' EXCHANGE OF ST.
LOUIS,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY.

No. 1240.

SAME

v.

MISSOURI PACIFIC RAILWAY COMPANY.

No. 1241.

SAME

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM-
PANY.

No. 1263.

SAME

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

No. 1267.

SAME

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

Submitted December 16, 1911. Decided February 5, 1912.

1. Commercial elevation and transportation elevation of grain defined and discussed, and the opinion expressed that the decisions of the Supreme Court in the *Diffenbaugh* and *Urdike* cases refer to transportation elevation.

2. A railroad has no right, under the pretext of a transfer which it does not require, to furnish a grain dealer commercial elevation or, what amounts to the same thing, to pay through an elevation allowance for the commercial elevation of his grain, and if it does so it must accord the same privilege or make the same payment to other persons and at other points.
3. Considering the *Diffenbaugh* and *Updike* cases together, as applied to the general subject of elevation and transfer in transit, the Commission concludes that it was the intention of the Supreme Court to hold that whatever might be the case if a railroad saw fit to confine its payment to elevation actually required in the transportation of the grain, it must, when it makes this allowance to one elevator under such circumstances as to give that elevator payment for commercial elevation, extend the same privilege to all other elevators similarly situated at that point.
4. Present orders in these cases struck off and new orders entered requiring defendants not to exceed three-fourths of 1 cent per 100 pounds in the payment of elevation or transfer allowances at the Missouri River, and to confine that payment to grain actually passing through the elevators in ten days.

J. C. Lincoln for complainant.

W. T. Cornelison for Peoria Board of Trade.

Frank Hagerman for Kansas City and St. Joseph elevator interests.

W. M. Hopkins for Chicago Board of Trade.

T. L. Goemann for Toledo Produce Exchange.

E. R. Smith for Omaha Grain Exchange.

F. B. Warwick for St. Joseph Board of Trade.

H. G. Wilson for Kansas City Board of Trade.

E. E. Williamson for Cincinnati Receivers' & Shippers' Association.

N. S. Brown for Wabash Railroad Company.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

Ralph M. Shaw for Chicago Great Western Railroad Company; Chicago & Alton Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; and Kansas City Southern Railway Company.

C. C. Wright for Chicago & North Western Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, Chairman:

The above cases involve an alleged discrimination by the defendants against St. Louis as a grain market, as compared with rival markets upon the Missouri River, worked by the payment of a so-called elevation allowance of three-fourths of a cent per 100 pounds at the Missouri River. The matter has already been once passed upon in the original report of the Commission, 14 I. C. C. Rep., 317, which may be referred to for a fuller statement of the facts.

In brief, the Commission there found that the defendants transported grain from the fields of production west of the Missouri

River through the Missouri River markets to St. Louis; that the rate applied to the transportation of this grain when it moved through the Missouri River without stopping was made up by adding together a rate up to the Missouri River and another rate from the river; that when the grain was elevated at the Missouri River the owner was paid an elevation allowance of three-fourths of a cent per 100 pounds upon the pretext that this was a transfer service for the railway. It followed therefore that the owner of an elevator upon the Missouri River could bring grain in from the field, elevate it at the Missouri River, and send it on to the Mississippi River destined to the eastern markets less by three-fourths of a cent per 100 pounds than the grain dealer at St. Louis, who must provide his own elevation facilities and who receives no elevation allowance. We held that these defendants in giving this advantage of three-fourths of a cent per 100 pounds to grain dealers at the Missouri River unduly discriminated against competing grain dealers at St. Louis to that extent.

It was pointed out in the original report that three possible methods might be adopted for the purpose of removing this discrimination.

1. The through rate, when applied to grain not stopping at the Missouri River, might be made three-fourths of a cent per 100 pounds less than the sum of the rates upon that market. The defendants in these cases all admit that where grain is bought in Kansas or Nebraska destined to St. Louis there is no necessity of unloading or transferring it at the Missouri River, and that none of them would so transfer it as a matter of transportation necessity or economy. When, therefore, grain is taken up at a given point in Kansas, shipped into Kansas City, there elevated, and shipped out to St. Louis by one of these defendants, that defendant not only switches one car to the elevator and another car from the elevator, but also pays three-fourths of a cent per 100 pounds for the elevation in addition to the service involved in the through haul—that is, the actual cost of transportation to the carrier, when the grain is elevated at the Missouri River, is at least three-fourths of a cent per 100 pounds more than as though it was hauled directly through to St. Louis. This being so, it would be perfectly just to establish a through rate less by three-fourths of a cent per 100 pounds than the sum of the two local rates.

This remedy did not, however, appear to be practicable, since certain lines of railway beginning at the Missouri River insist that they can not obtain a fair proportion of this grain traffic originating west unless the grain is elevated at the Missouri River markets. Whatever reduction was made in the through rate by the Commission would be met by these lines which would insist upon the same rate in and out

of the Missouri River as the joint rate through. It did not therefore seem wise to attempt to deal with the discrimination in that manner.

2. The discrimination might be removed by requiring the defendants to pay at St. Louis whatever elevation allowance they pay at the Missouri River, and such an order would have been in line with the previous holdings of the Commission as to discrimination in general and as to this particular form of discrimination. *City Council of Atchison, Kans., v. M. P. Ry. Co.*, 12 I. C. C. Rep., 111. An attempt to deal with the matter in this way would, however, result in indefinitely extending these allowances in a way that might finally produce more discrimination than it corrected.

3. The final method was to prohibit the payment of the allowances altogether, and this was the plan adopted by the Commission. Our order was, however, contested by the owners of elevators upon the Missouri River, and the Supreme Court has finally held it to be unlawful. *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S., 42.

In consequence of the rendition of this decision the Commission set the cases down for further hearing with a view to considering what should now be done either by modifying its present order or by striking that order off and entering a new one. Upon the hearing no new testimony was introduced. The various railroad companies who are defendants in these proceedings did not appear, but the complainant was represented, as were also various grain dealers upon the Missouri River.

The complainant asks us to now deal with this question under the first method above stated, namely, by establishing a through rate which is less by the amount of this elevation allowance than the sum of the rates into and out of the Missouri River markets. In our view of the matter, however, the objection previously stated to that course of procedure is still a valid one. To attempt to reduce the through rate would only result in rate reductions and complications which would unsettle the transportation situation in that whole country without profiting anybody. We must therefore exclude this from our consideration, and inquire what should be done under the decision of the Supreme Court either in minimizing the advantage which the dealer at the Missouri River obtains from this allowance or in compelling a corresponding allowance at St. Louis.

This inquiry can be best answered by considering the *Peavey case*, which was passed upon by the Supreme Court in connection with the *Diffenbaugh case, supra*.

In 1899 the Union Pacific Railroad Company entered into a contract with Peavey & Company by which the latter agreed to construct an elevator at Council Bluffs at which the cars of the Union Pacific might be unloaded and the grain transferred into the cars of its

eastern connections. The Union Pacific originates large quantities of grain upon its lines in Nebraska, which it brings to Council Bluffs, the eastern terminus of its road. Practically all this grain goes finally to some destination east of Council Bluffs, and the professed purpose of the Union Pacific in entering into this contract with Peavey & Company was to provide for the unloading of its own equipment, so that it might be speedily returned to the grain fields for further service, and the subsequent transfer of the grain into cars of the lines carrying it on east. It asserted that in the economical operation of its road it must either build an elevator at that point to perform this service or hire one, and it preferred the latter course. The contract price for the elevation and transfer service was $1\frac{1}{4}$ cents per 100 pounds.

It turned out in the operation of this contract that the grain elevated at the Peavey elevator belonged almost entirely to Peavey & Company itself. Certain railroads competing with the Union Pacific for the grain business from Nebraska to the east alleged that this amounted to a payment to Peavey & Company for the elevation of its own grain, and that the pretended contract was, in reality, but a device for the payment of a rebate. The Commission, upon investigation, sustained the good faith and legality of the contract. *In the Matter of Allowances to Elevators by the U. P. R. R. Co.*, 10 I. C. C. Rep., 309.

Still later, these competitors of the Union Pacific brought this matter again to the attention of the Commission and a further investigation was held. It was now asserted that since, owing to the passage of the Hepburn amendment, this so-called rebate to Peavey could not be offset by a corresponding allowance to other grain dealers, all railroads reaching the Missouri River would be compelled to pay elevators handling their grain a similar allowance. The Commission adhered to its first conclusion that the contract was lawful, but reduced the amount of the transfer charge from one and one-fourth cents to three-fourths of a cent. 12 I. C. C. Rep., 85.

In point of fact, other lines at the Missouri River did, by proper tariff authority, thereafter make a similar allowance to all elevators upon the Missouri River, but made no allowance at St. Louis. The result was the filing of these complaints by St. Louis, which again brought the entire subject before the Commission.

The defendants in these proceedings all admitted that this grain was not elevated upon the Missouri River as a transportation necessity or convenience. None of them desired to transfer this grain at that point. The grain was elevated at the Missouri River because grain dealers located at those points directed that it be sent to their elevators in order that it might be treated and again shipped out by them.

In fact, whatever grain went into an elevator must go out of it, and therefore the process of elevation did result in a transfer, but inasmuch as the elevation was for the convenience of the grain dealer and not of the transportation company, we found that the mention of transfer in the tariffs was a mere pretext, that the allowance was really paid to the owner of the grain for performing his own service, and that this was undue discrimination, which should be prohibited.

Here are two carloads of grain taken up by the Union Pacific at the same point in Nebraska and transported in the same train to Council Bluffs. One car is delivered upon the team track of the Union Pacific and is there received by the consignee, while the other car, being the property of Peavey & Company, is delivered at that elevator. For unloading the first car the Union Pacific pays nothing; for unloading the second car it pays an elevation allowance. We held that this was a discrimination. If the Union Pacific rested under any obligation to elevate this grain for Peavey & Company then it should charge a reasonable compensation for that service. It might not perform the unloading service gratis for one shipper while it declined to do so for another.

Here were two elevators situated in Council Bluffs, both upon the line of the Union Pacific. They had been erected and were operated at the same expense. They were owned by rival grain dealers handling the same quantity of grain of the same kind. The only grain handled through the Peavey elevator was the grain of Peavey & Company, the only grain handled through the rival elevator belonged to its owner. Now, if Peavey & Company could be paid, under the guise of this transfer charge, three-fourths of a cent per 100 pounds, while its competitor received nothing, this, in the opinion of the Commission, was an undue discrimination which should be prohibited.

In case of other elevators than that of Peavey & Company upon the Missouri River we ordered that the carriers cease and desist from the payment of the elevation allowance, since there was no pretext that the service for which this was paid was a legitimate transportation service. Since the Peavey contract in terms provided for a transfer, and since we recognized, as stated in the opinion, the right of the carrier to provide for any transfer which was necessary in the course of its operation by contract with the owner of a private elevator, we sought to prevent the discrimination, first, by providing that where the grain belonged to Peavey & Company the allowance should not be paid unless it passed through the elevator in 10 days, it being our opinion that that length of time was sufficient for a simple transfer of the grain, and, next, that it should not be paid if the grain, during the period of its transfer, had been

treated by mixing, clipping, etc., in the elevator. In other words, we endeavored to confine the allowance paid to Peavey & Company under the contract to that grain which was actually transferred for transportation reasons, and to prevent its payment with respect to that grain which had been made the subject of commercial elevation.

The Supreme Court has sustained our order as to the 10-day provision, but has enjoined it as to commercial elevation. As we understand the opinion, it holds that a railroad may employ the owner of an elevator to perform a part of the transportation service which is incumbent upon the railroad, paying a reasonable compensation therefor, and the fact that the owner of the elevator during the process of transfer or elevation can subject the grain to other processes which are of incidental benefit to him does not amount to an undue discrimination.

Under this decision two questions of importance arise.

The Supreme Court holds that elevation is a part of transportation which the railroad is required to furnish under the first section of the act. Just what is included in the term elevation as used by the court, and where must this elevation service be rendered?

May any grain dealer owning an elevator in Council Bluffs or Omaha say to the Union Pacific, "I desire this carload of grain elevated at my elevator," and must the Union Pacific in the discharge of its transportation duty elevate the grain at that elevator?

May the owner of an elevator upon the line of the Union Pacific at some other point than Omaha demand elevation at his elevator?

It is hardly credible that in holding that elevation is a transportation service which the railroad must render upon reasonable request by the shipper the court intended to include commercial elevation. It must have had reference merely to that elevation which is a legitimate and necessary part of transportation.

The first section of the act includes in the term transportation, along with the elevation and transfer in transit of grain, refrigeration, storage, handling. It would hardly be claimed that a shipper could require a railroad to refrigerate his property for his convenience either at some point upon the line of the railroad in transit or at the end of the haul. Neither would it be claimed that the owner could at will demand storage either in transit or at the end of the route, nor that the railroad was by the terms of the statute compelled to handle carload traffic in and out of the car. The meaning of the first section is clearly to impose upon the carrier the duty of refrigerating, storing, elevating, transferring, in so far as those matters are properly incidental to the transportation. It was the intent of Congress to compel the carrier to perform, to the full, its transportation service in all its essentials and to put that entire service within

the jurisdiction of this Commission, to the end that unreasonable and discriminating charges might be prohibited. We are of the opinion that the elevation referred to by the Supreme Court is not commercial elevation, but that transportation elevation which is a necessary incident to the handling of grain from the field to the consumer.

If the elevation referred to by the Supreme Court as a part of the service of transportation is only such elevation as inheres in that transportation; in other words, if the duty of the railroad is merely to transport the grain from point to point and to furnish whatever transfer or elevation or storage may be necessary in the course of that transportation, then we think, under the decision of the Supreme Court, it must follow that the Union Pacific can only be required to grant this elevation at such points as, in the proper operation of its property, it may find necessary, and if that company in good faith requires a transfer service at Omaha and not at some point west of Omaha, it may provide for that service under contract with Peavey & Company or with any other grain elevator at Omaha and may pay a reasonable sum for that service to the owner of an elevator, even though its own grain is transferred, while it would not be obliged to make the same allowance at some interior point.

But even under this interpretation of the word "elevation," the Union Pacific has no right, under the pretext of a transfer which it does not require, to furnish a grain dealer commercial elevation or, what amounts to the same thing, to pay through an elevation allowance for the commercial elevation of his grain, and if it does so it must accord the same privilege or make the same payment at other points.

If, upon the other hand, the Supreme Court means that elevation is a thing which the shipper may demand as a matter of right, according as he needs it in the legitimate handling of this grain, then we think that this right may be exercised by the shipper at any point where it can be properly used for that purpose. A grain dealer would have no right to require of the Union Pacific elevation at a point where it could not be properly availed of for the transaction of a grain business; but certainly the right to demand this service, if it be a right, can not attach to any particular locality as against any other locality. If the Union Pacific is under obligation to render this service, it can not elect to discharge it at the Missouri River and nowhere else. Such a conclusion would put it within the power of a particular railroad to determine where the grain business of this country should be transacted.

This further question arises: May the Union Pacific confine the transfer of its grain to one elevator or must it distribute that transfer among all elevators in the same locality?

The original contract with Peavey & Company was confined to that elevator, and the Commission at first sustained the legality of this

exclusive contract. If the Union Pacific may hire Peavey & Company to perform this transfer service which otherwise it must secure through its own facilities, and if in so doing no discrimination is worked between that elevator and its competitors, how can it be said that the Union Pacific may not perform its entire transfer through this particular elevator, and upon what theory is it obliged to divide that business among all the elevators at that point?

The decision of the Supreme Court in the *Diffenbaugh case* would apparently sustain the original holding of the Commission, in which the validity of this exclusive contract was upheld, and we should feel required to give it that application were it not for a second opinion handed down three weeks after the Diffenbaugh decision, with reference to this same elevation situation at Omaha. *Union Pacific R. R. Co. v. Updike Grain Co.*, 222 U. S., 215.

Originally the Union Pacific had confined its business under the contract to Peavey & Company. Subsequently the allowance was extended to a second elevator located upon the tracks of the Union Pacific known as the Trans-Mississippi elevator. Still later, the Union Pacific published a tariff by which it opened this allowance to all elevators at Omaha and Council Bluffs, provided the car was unloaded and returned to the Union Pacific within 48 hours.

Certain elevators in that locality were, partly from their situation and partly from the operation of certain rules as to the handling of cars to which the Union Pacific was a party, unable to comply with that provision which required a return of the cars within 48 hours, so that the practical working of this tariff was to permit payment to the Peavey and Trans-Mississippi elevators and to exclude, for the most part, all other elevators from the benefit of this allowance.

Upon application to the Commission we held that whatever allowance was made by the Union Pacific to the Peavey Company must be made by that railroad to all competing elevators at Omaha and that the Union Pacific could not incorporate into its tariff a provision which, while reasonable upon its face, nevertheless, in actual practice, resulted in the payment to one elevator and not to another. These orders for reparation were sustained by the circuit court and the circuit court of appeals and are now approved by the Supreme Court of the United States. It follows, then, that this court has held that if this allowance is made to one elevator at Omaha or Council Bluffs it must be made to other elevators in that vicinity.

The court apparently holds that this elevation is a transportation service which has been performed by these elevators at Omaha and that it would be unjust to pay one for this service and decline to

pay another for the same service. If elevation is a thing which every grain dealer in Omaha may demand at his elevator, then, clearly, the Union Pacific can not decline to pay in one case and pay in another, nor, indeed, could it decline to pay to every elevator a reasonable compensation for the service which it performs.

It may be suggested that even though these elevators at Omaha had no right to demand of the Union Pacific that grain be elevated at their respective places of business, nevertheless, in the opinion of the Supreme Court, the publication of this tariff was in substance an invitation to all elevators to perform that service.

Considering these two cases together, as applied to the general subject of elevation and transfer in transit, we conclude that it was the intention of the Supreme Court to hold that whatever might be the case if a railroad saw fit to confine its payment to elevation actually required in the conduct of its business, it must, when it makes this allowance to one elevator under such circumstances as to give that elevator payment for commercial elevation, extend the same privilege to all other elevators similarly situated at that point.

It will be noted that the Commission in fixing a 10-day limit was endeavoring to confine the payment of this allowance to grain, which was the subject of transportation elevation proper, and to prevent its being extended to payment for commercial elevation pure and simple. This the court has approved, and we think that we ought to apply to other elevators upon the Missouri River the same rule for the same purpose.

Practically all grain handled by the Peavey elevator belonged to Peavey & Company. Generally the bulk of the grain passing through other elevators upon the Missouri River is the property of the elevator, and in all cases where the elevator does not own the grain it gives to the owner, as a matter of course, the benefit of the allowance.

As previously stated, the carriers who are defendants in these cases were not represented upon the last hearing, and we have therefore from them no statement as to the necessity of a transfer at the Missouri River or as to the time required for such transfer, except what appears in the original record. Grain dealers upon the Missouri River did state that if the limit of 10 days were enforced they would be deprived of a very considerable portion of the elevation allowances which they now receive, since it would be a practical impossibility to sell the grain and send it along within that time; but this we already understood. No reason is urged which convinces us that the period fixed in the *Peavey case* was not proper, and it seems evident that whatever time limit is applied to one elevator upon the Missouri River should be applied to all.

These proceedings were begun for the purpose of removing the discrimination against St. Louis, which arose from the payment of elevation allowances upon the Missouri River without a corresponding payment at the Mississippi River. It is evident that if payment at the Missouri River is limited to grain actually passing through the elevator in 10 days, there might still remain a preference against St. Louis. Whether this preference, under the holding of the Supreme Court, would be undue, and if so by what order of this Commission such unlawful discrimination could be removed, is not at this time considered. We now confine our action to the strict letter of those decisions, reserving all further questions until actual experience shall have demonstrated the effect of the present order.

We shall therefore strike off the present orders in these cases and enter up new orders requiring the defendants not to exceed three-fourths of 1 cent per 100 pounds in the payment of elevation or transfer allowances at the Missouri River, and to confine that payment to grain actually passing through the elevators in 10 days.

22 I. C. C. Rep.

No. 4053.

CALIFORNIA POLE & PILING COMPANY ET AL

v.

SOUTHERN PACIFIC COMPANY.

Submitted September 5, 1911. Decided February 12, 1912.

Rates on poles and piling from various points in Oregon to stations on defendant's line in California found unreasonable to the extent they exceed the lumber rates between the same points. Reparation awarded.

J. O. Bracken for complainants.

F. C. Dillard and *George D. Squires* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainants, California Pole & Piling Company, a corporation having its office at San Francisco, Cal., and C. F. Walker, whose principal place of business is at Cottage Grove, Oreg., allege by joint petition, filed April 27, 1911, that on the several dates named in the petition they caused to be delivered to the Southern Pacific Company numerous carloads of poles or piling for transportation from specified points of origin in Oregon to certain points on defendant's line in California; that on said shipments the defendant charged a rate of \$6 per ton of 2,000 pounds to San Francisco; and that a graduated increase over the San Francisco rate was applied on shipments to certain other destinations in California; that this rate is constructed by adding to the lumber rate from and to the points in question a differential of \$1 per ton, and that said rate of \$6 is unreasonable to the extent it exceeds the rate of \$5 to San Francisco, with the graduated increase to other points. Concisely stated, the substance of the complaint is that the rate on poles and piling is unreasonable to the extent it exceeds the rate on lumber contemporaneously in effect between said points; and further, that the rates assailed are also discriminatory in that the rates on poles from the points of origin specified to points in Arizona, New Mexico, and Utah are the same as the rates on lumber. Reparation is asked.

The complaint includes 78 carloads which moved between May 4, 1909, and March 24, 1911, from Portland, East Portland, Cottage Grove, Saginaw, Curtin, Springfield, Divide, Veatch, Anlauf, Safley,

22 I. C. C. Rep.

differential in the rail rates. It is also said that the tonnage of poles and piling in the territory in question is less than 4 per cent of the total volume of forest products moving by rail.

In *Partridge Lumber Co. v. G. N. Ry. Co.*, 17 I. C. C. Rep., 278, the Commission held:

It is only in very unusual cases that higher rates should be applied to posts and poles than to lumber.

The rule that the transportation charge for posts and poles shall not exceed that applied to sawed lumber seems to grow out of the character of the commodities themselves. While the cost of movement is probably somewhat less in case of lumber, the value of the commodity is much less per carload with posts and poles, which are also more nearly in the nature of raw material. The standing timber from which posts and poles are obtained is not ordinarily capable of being used in the manufacture of lumber, so that there is no competitive reason, at least no strong competitive reason, why the rate upon these two commodities should be the same.

The Commission also held, in *MacGillis & Gibbs Co. v. C. & E. I. R. R. Co.*, 16 I. C. C. Rep., 40, that upon general principles it would seem that the rate upon poles and logs ought not to exceed that upon manufactured lumber.

The defendant in this case has shown no clear reason for the maintenance of rates on poles and piling to destinations in California higher than it charges and receives on movements of lumber to the same destination. It is true that some claim is made on the record that the cost of the service in transporting lumber is less and that poles and piling have to be transported on flat cars, which entails an empty movement of such equipment. But the testimony on these

conclusive, and we do not find in them the differential complained of. More differential in the rates applied by the carriers in the movements of poles and as stated, the defendant maintains the same rate on lumber to destination on its lines to Arizona, and New Mexico.

by reason of the shifting of poles or some cases from improper loading and grades over which the traffic moves, it is necessary to readjust the loads on the cars. This applies to lumber and other forest products in this territory. The defendant has put the cost of such readjustments on addition to the freight rate. There is no such charge, although the defendant has the rule published in its tariffs requiring the shipper to unload all carload freight. This places upon shippers the duty of properly distributing the burden of the expense incurred by

and Krewson, in the state of Oregon, to Coalinga, Paso Robles, Olig. Hamilton, Merced, Orland, Stockton, Richmond, Anderson, Weed, Willows, Dunsmuir, Corning, Ager, Sisson, South San Francisco, Mountain View, Marysville, San Bruno, Redding, Red Bluff, Kennett, Montague, Conley, Galt, Elk Grove, and Brighton, in the state of California. At the time the shipments moved defendant's tariffs named from and to the points in question rates on wooden telegraph poles and piling which were uniformly \$1 per net ton higher than the rates on lumber, and the same basis is maintained to the present time. This differential was not then, and is not now, applied on traffic to points in Utah, Nevada, or Arizona, to which points the rates on poles are the same as on lumber.

The complainants contend, in support of their demand for the removal of the differential of \$1 per ton, that poles are an unmanufactured commodity of which lumber is a manufactured product; that the same minimum carload weight, 30,000 pounds, is applied to both lumber and poles, the latter being actually loaded to as high as 76,400 pounds to the car; that poles are loaded and unloaded more quickly than lumber; that movements of poles result in no claims against the carriers for loss and damage; and that it is the almost universal custom to maintain a parity of rates on lumber and poles. The complainants further show that the defendant maintains the same rates on the two commodities from points of origin named to destinations on its lines in Nevada, Utah, Arizona, and New Mexico, and aver that no reason exists why the same parity should not be maintained in the rates to California destinations.

The defendant, on the other hand, asserts that the differential of \$1 is the direct result of water competition at Portland; that the ocean carriers handle poles and piling only in cargo lots or full deckloads; and that the charges of the steamers for movements of poles are based not on the weights but on the measurements, ascertained by squaring the butts, to determine the number of feet contained in each pole. It is said that the ocean rates on poles and piling are therefore slightly higher than the rates on lumber, although definite figures are not given. The defendant asserts that as the result of this difference in the ocean rates it is enabled to get higher rates for poles and piling than it can charge on lumber. There are, however, some contradictions in the testimony. It definitely appears that there is active competition by water between Portland and coast cities in the state of California not only with respect to the lumber traffic but on movements of poles and piling. One witness describes the traffic in those products by rail between these points as insignificant when compared with the volume of water movements. But proof is lacking of any substantial difference in the ocean rates on lumber and on poles and piling that will explain or justify the

differential in the rail rates. It is also said that the tonnage of poles and piling in the territory in question is less than 4 per cent of the total volume of forest products moving by rail.

In *Partridge Lumber Co. v. G. N. Ry. Co.*, 17 I. C. C. Rep., 278, the Commission held:

It is only in very unusual cases that higher rates should be applied to posts and poles than to lumber.

The rule that the transportation charge for posts and poles shall not exceed that applied to sawed lumber seems to grow out of the character of the commodities themselves. While the cost of movement is probably somewhat less in case of lumber, the value of the commodity is much less per carload with posts and poles, which are also more nearly in the nature of raw material. The standing timber from which posts and poles are obtained is not ordinarily capable of being used in the manufacture of lumber, so that there is no competitive reason, at least no strong competitive reason, why the rate upon these two commodities should be the same.

The Commission also held, in *MacGillis & Gibbs Co. v. C. & E. I. R. R. Co.*, 16 I. C. C. Rep., 40, that upon general principles it would seem that the rate upon poles and logs ought not to exceed that upon manufactured lumber.

The defendant in this case has shown no clear reason for the maintenance of rates on poles and piling to destinations in California higher than it charges and receives on movements of lumber to the same destination. It is true that some claim is made on the record that the cost of the service in transporting lumber is less and that poles and piling have to be transported on flat cars, which entails an empty movement of such equipment. But the testimony on these points was neither definite nor conclusive, and we do not find in them a sufficient justification for the differential complained of. Moreover there is apparently no differential in the rates applied by the Northern Pacific and other carriers in the movements of poles and piling into Portland; and, as stated, the defendant maintains the same rates on those articles as on lumber to destination on its lines in the states of Nevada, Utah, Arizona, and New Mexico.

The record indicates that by reason of the shifting of poles or piling on the cars, resulting in some cases from improper loading and in other cases from the heavy grades over which the traffic moves, it sometimes becomes necessary to readjust the loads on the cars. This is true also of movements of lumber and other forest products in this territory. The practice is to put the cost of such readjustments on the shippers, by a charge in addition to the freight rate. There is no specific tariff authority for such charge, although the defendant claims that it is justified by the rule published in its tariffs requiring consignors to load and consignee to unload all carload freight. This rule is interpreted as placing upon shippers the duty of properly protecting their traffic or the burden of the expense incurred by

carriers in doing the work for them or in readjusting loads when not properly adjusted in the first instance by the shipper. If such charge is to be made it must be provided for by proper tariff rule.

Upon the whole record we are of the opinion, and so find, that the rates of the defendant for the transportation of poles and piling in carloads from the respective points of origin above named to destinations on its line in California are unreasonable so far as they exceed the rates which it contemporaneously charges for the transportation of lumber between the same points. A parity of rates should be maintained in the future.

The complainants and defendant have made and stipulated into the record a statement of the shipments involved and the charges paid thereon, which statement has been verified. We find that on various dates between May 4, 1909, and March 24, 1911, the complainant, California Pole & Piling Company, shipped from and to the points in question 62 cars of poles, the details of which are set out in the petition and in the stipulation mentioned. We find that the total weight of said 62 cars was 2,794,190 pounds, upon which said complainant paid charges at rates which were uniformly \$1 per ton higher than the rates on lumber contemporaneously in effect from and to said points; that it has been damaged in the sum of \$1,397.10, which is the amount paid in excess of what it would have paid had the rate applicable on lumber been applied to the poles; and that it is therefore entitled to an award of reparation in the sum stated, with interest from April 1, 1911, less \$20.83, which represents the sum of certain undercharges due the defendant on the shipments in question.

We further find that complainant C. F. Walker, on various dates from February 22, 1910, to May 21, 1910, shipped from and to the points in question 16 cars of poles, the details of which are set out in the petition and the stipulation of facts hereinbefore referred to. We find that the total weight of said 16 cars was 1,038,700 pounds, upon which this complainant paid charges at rates which were uniformly \$1 per ton higher than the rates contemporaneously in effect on lumber from and to the said points; that he has been damaged to the extent of \$519.35, which is the amount paid in excess of what he would have paid had the lumber rates been applied; and that he is therefore entitled to an award of reparation in the sum stated, with interest from June 1, 1910.

The defendant will be required to establish and maintain for a period of two years rates on poles from and to the points named which shall not exceed the rates contemporaneously in effect on lumber.

An order will be entered in accordance with these conclusions.

22 I. C. C. Rep.

No. 3478.

MILBURN WAGON COMPANY

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COM-
PANY ET AL.

Submitted February 10, 1911. Decided January 8, 1912.

Through error of the initial carrier a car larger than that ordered by shipper was furnished for transportation of a shipment of farm and freight wagons from Toledo, Ohio, to Smithville, Tex., and minimum weight applicable to the car furnished resulted in charges in excess of those which would have been assessed upon the car ordered; *Held*, That the charges were unreasonable so far as they exceeded charges which would have accrued upon a car of the size ordered by shipper. Reparation awarded.

Edward D. Ryan for complainant.

F. J. Jerome for Lake Shore & Michigan Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture of vehicles at Toledo, Ohio. By petition, filed August 24, 1910, it alleges that unreasonable charges were collected by defendants for the transportation of a carload of farm and freight wagons shipped July 14, 1910, from Toledo to Smithville, Tex. Reparation is asked.

For the movement of this shipment complainant ordered from the Lake Shore & Michigan Southern Railway Company a 36-foot car. Apparently no car of that size was available, and one of the initial carrier's employees ordered the placement of a 40-foot car. As stated in defendant's brief:

The car actually used was a 45-foot car, and, under the minimum above stated, applicable to that size of car, it was proper to charge for 20,500 pounds. It appears, however, that, by mistake of some employee of the defendant, the 45-foot car was furnished under the impression that it was a 40-foot car. In other words, in the absence of an error attributable to this defendant, the shipment would have moved in a 40-foot car. Moving in such a car, the minimum of 18,000 pounds would have been applicable, instead of that of 20,500 pounds, which was actually applied. This defendant, therefore, respectfully requests that it be authorized by the Commission to make a refund upon the basis indicated.

The tariff which named the rate applicable to this shipment, Supplement 7 to Leland's I. C. C., 677, provided a rate of 95 cents per 100 pounds, subject to a minimum weight of 12,000 pounds for cars 36 feet in length (inside measurement); 18,000 pounds for cars 36 feet 7 inches in length to and including 40 feet 6 inches (inside measurement); and a minimum of 20,500 pounds for cars 40 feet 7 inches in length to and including 46 feet 6 inches (inside measurement).

When the shipment moved the Southwestern Lines tariff above mentioned referred to a rule providing for application of the minimum weight of a small car when a car larger than that ordered by the shipper was furnished for the convenience of the carrier, but this rule did not apply from Cleveland-Detroit territory, as to which the shipment was subject to the rule of the official classification, which reads as follows:

If a shipper orders a car less than 40 feet 6 inches in length, and the carrier is unable to furnish such a car, and furnishes a longer car than ordered, but not exceeding 40 feet 6 inches in length, the minimum weight shall be that fixed for the car ordered, except when the loading capacity of the car furnished is used, the minimum weight shall be that fixed for the car furnished.

In the recent case of *Noble v. B. & O. R. R. Co.*, 22 I. C. C. Rep., 432, the rule of the official classification, above quoted, was considered at length and condemned as unreasonable and discriminatory. Without restating what is said in that report, it is sufficient to say that we are of opinion that the initial carrier should establish for the future a rule to the effect that when a car of the capacity or dimensions ordered by a shipper and provided for in the tariff can not be furnished after six full days' notice therefor has been given by the shipper and a larger car is furnished, such larger car shall be used upon the basis of the minimum weight fixed in the tariff for the car which was ordered, provided the shipment could have been loaded upon or in a car of the size ordered.

We find that upon the car in question transportation charges were paid by complainant in the sum of \$194.75 at the rate of 95 cents applied to a minimum weight of 20,500 pounds; that said charges were unreasonable so far as they exceeded charges which would have accrued by application of said rate to the actual weight of the shipment, which was 15,500 pounds; that complainant was damaged to the extent of the difference between the charges which it did pay and the charges which would have accrued at the rate of 95 cents applied to the actual weight of 15,500 pounds; and that complainant is therefore entitled to reparation in the sum of \$47.50, with interest from July 28, 1910. An order will be entered awarding reparation in the amount stated and requiring defendant to amend its rule in accordance with the conclusions here stated.

No. 3383.

LEGGETT & PLATT SPRING BED & MANUFACTURING
COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL

Submitted March 15, 1911. Decided February 12, 1912.

Rate of 33 cents per 100 pounds for transportation of plain wire in carloads from Waukegan, Ill., to Carthage, Mo., found to be unduly prejudicial.

H. W. Blair for complainant.

James C. Jeffery and *Herbert J. Campbell* for Missouri Pacific Railway Company.

F. H. Wood, *Edward A. Haid*, and *W. F. Evans* for St. Louis & San Francisco Railroad Company.

T. J. Norton and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture of spring beds at Carthage, Mo. Its petition, filed July 8, 1910, alleges that defendants' fifth class rate of 33 cents per 100 pounds for the transportation of plain wire from Waukegan, Ill. (a point taking Chicago rates), to Carthage, Mo., is unreasonable and unduly prejudicial as compared with the fifth class rate of 27 cents from Waukegan to Kansas City, Mo., and the commodity rate of 27 cents to Springfield, Mo. Reparation is asked.

Carthage is on the Missouri Pacific and St. Louis & San Francisco railroads, approximately 150 miles south of Kansas City and 75 miles west of Springfield. The rate of 33 cents on wire from Chicago to Carthage is made by adding a differential of 5 cents to the rate from St. Louis to Carthage. The St. Louis & San Francisco is the short line from St. Louis to Carthage, the distance over its rails being 313 miles. Via its line shipments from St. Louis to Carthage pass through Springfield and 75 miles beyond. The route from St. Louis via the Missouri Pacific is west through Pleasant Hill, Mo., thence south through Nevada, Mo., a distance of 364 miles. The Missouri Pacific distance from St. Louis to Springfield is 448 miles. Thus,

while Springfield is intermediate to Carthage on the St. Louis & San Francisco, Carthage is intermediate to Springfield via the Missouri Pacific route; and, while the Missouri Pacific route is much more circuitous than that of the St. Louis & San Francisco from St. Louis to Carthage and Springfield, the former line has a much shorter route than the latter from St. Louis to Kansas City.

Plain wire is the principal material used by complainant in the manufacture of spring beds. These beds come into direct competition with spring beds sold at Kansas City and Springfield. There are factories at Kansas City, but Springfield is strictly a jobbing point. The rate on spring beds from Chicago to Springfield is 30 cents, or 3 cents less than Carthage pays for its material. Factories at Kansas City are the chief competitors in Missouri and Kansas. Except to Wichita, Kans., Carthage is practically on an equality with Kansas City as to outbound rates on spring beds, which gives Kansas City a net advantage of the 6-cent difference in the inbound rate on wire. The furniture rate from Carthage to Wichita is 7 cents less than the rate from Kansas City, but the inbound rate on wire to Kansas City reduces this advantage to 1 cent.

Rates from Carthage, Kansas City, and Springfield to southern Oklahoma, southern Arkansas, Texas, and Louisiana are practically the same, and it follows that Kansas City and Springfield have an advantage of about 6 cents per 100 pounds, represented by the difference in the inbound rates on wire. Chicago also can undersell Carthage in this territory, the rate on spring beds from Chicago to Texas common points being 94 cents. The wire rate into Carthage plus the rate on the finished product out makes a rate of \$1.18.

The St. Louis & San Francisco, which is the direct line to both Springfield and Carthage, makes the rates to those points, said rates being met by the Missouri Pacific, which has a circuitous route. It is apparent from the record that the circumstances and conditions surrounding the transportation from Chicago to Kansas City and from Chicago to Carthage are so dissimilar that a finding of undue prejudice can not be predicated upon the difference in rates to Kansas City and Carthage.

Considering, however, merely the rates to Springfield and Carthage the following anomalous situation is presented. To Springfield the rate on plain wire, the raw material, is 27 cents, and the rate on spring beds, the product, is 30 cents; while to Carthage, a point 75 miles farther from Chicago, the rate on wire is 33 cents and the rate on spring beds 31½ cents.

The carriers' defense of this unusual rate adjustment may be briefly summarized as follows: Formerly the St. Louis & San Francisco Railroad had no line into Kansas City, and it was its practice to extend to Springfield, which was then the principal jobbing center

in southwest Missouri, the same rates as were applied by other lines from St. Louis to Kansas City. In accordance with the established method of making rates from Chicago territory to Missouri points, the addition of the established differential of $7\frac{1}{2}$ cents over the rate from the Mississippi River produced the same rate from Waukegan to Springfield as from Waukegan to Kansas City, and this arrangement resulted in the rates on wire of 27 cents to Springfield and 33 cents to Carthage. When it came, however, to making the rates on spring beds, the carriers' discretion was somewhat controlled by the fact that the rates within Missouri were fixed by a statute enacted about 1872, and which is still in force. Under this statute the rate on spring beds from St. Louis to Carthage is 24 cents. Adding to this the Chicago differential over the Mississippi River of $7\frac{1}{2}$ cents produced the $31\frac{1}{2}$ -cent rate to Carthage, and in a similar manner the 30-cent rate to Springfield. Although the rate fixed by the state of Missouri had no legal effect so far as interstate rates were concerned, it seems to be the contention of the carriers, and is perhaps a fact, that if the state rate were not reflected in the interstate rate, cities and jobbing centers within Missouri would have a monopoly of the business of that state to the exclusion of cities in other states. In support of this explanation of the rate adjustment it is pointed out that westward from the Missouri state line the proper relation of rates is restored as between spring beds and the wire from which they are manufactured; for instance, to Hutchinson and Wichita, Kans., the rates from Chicago are 55 cents on plain wire and 65 cents on spring beds.

The disadvantage under which complainant labors by reason of this rate adjustment is at once apparent. The jobber at Springfield can ship his beds in from Chicago at the 30-cent rate and ship them out to interstate points on a substantial parity with Carthage, whereas complainant has to pay an inbound rate of 33 cents on the wire from which its beds are manufactured. Giving full weight to the reasons advanced by defendants for this rate adjustment, which they do not attempt to justify on any transportation basis, but merely by reason of the state rates referred to, we are of the opinion that the present adjustment as between Springfield and Carthage is unduly prejudicial to complainant and its traffic, and therefore in violation of section 3 of the act. As has been noted, the rate on beds to Springfield is 3 cents higher than the rate on wire. We find that the present rate on wire to Carthage is unduly prejudicial and that for the future it ought to be at least 3 cents per 100 pounds less than the rate contemporaneously applied by defendants to the transportation of spring beds. For reasons stated in *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C. Rep., 43, we are of opinion that reparation should not be awarded. An order will be entered accordingly.

No. 3699.

LINDSAY BROTHERS

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY
COMPANY ET AL.

Submitted May 12, 1911. Decided January 8, 1912.

1. Joint rate of 23½ cents per 100 pounds on vehicles in carloads from Elkhart, Ind., to Milwaukee, Wis., found unreasonable in so far as it exceeds 18½ cents per 100 pounds. Reparation awarded.
2. Carriers required to amend their tariffs so as to contain a rule providing that when carrier is unable to furnish a car of large dimensions ordered by shipper, two smaller cars may be furnished and used on the basis of the minimum fixed for the car ordered.

James B. Blake for complainants.

D. P. Connell for Lake Shore & Michigan Southern Railway Company and Indiana Harbor Belt Railroad Company.

F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainants are wholesalers and jobbers of vehicles, with offices and warehouses at Milwaukee, Wis. Their petition, filed December 12, 1910, alleges that defendants' joint rate of 23½ cents per 100 pounds on vehicles (not self-propelling), n. o. s., in carloads from Elkhart, Ind., to Milwaukee, Wis., is unreasonable, and that complainants are thereby subjected to undue prejudice and disadvantage.

Complaint is also made of defendants' failure to incorporate in their tariffs a provision that when a carrier is unable to furnish a car of large dimensions ordered by a shipper, two smaller cars may be furnished and used on the basis of the minimum weight of the car ordered. Reparation is sought.

Complainants purchase vehicles at Elkhart and ship them to their warehouses at Milwaukee for distribution to the trade in central Wisconsin, northern Illinois, and eastern Iowa. The rate from Elkhart to Milwaukee is 23½ cents per 100 pounds. The proportional rate from Elkhart to Milwaukee on shipments going through Milwaukee

to points beyond where complainants' competition exists, is 15½ cents; and as a result it is alleged that complainants, who ship to Milwaukee and reship to points where they effect sales, are greatly prejudiced by the amount of the freight charges to which they are subjected as compared with the charges to the further points that have the benefit of a lower proportional rate accorded Milwaukee as a commercial gateway.

The rate on vehicles from Elkhart to Milwaukee has been advanced twice within the six years immediately preceding the filing of the complaint. Formerly it was 17½ cents, based upon a 12½-cent rate to Chicago, and a 5-cent proportional from Chicago to Milwaukee. Subsequently the 5-cent proportional was advanced to 8½ cents, and defendants then published a commodity rate of 21 cents, Elkhart to Milwaukee. Later this rate was canceled, leaving in effect the joint class rate of 23½ cents applicable under rule 25 of the official classification.

It was testified that the division of the rates is upon a 50 per cent basis, giving each defendant 7½ cents out of the proportional rate, and 11½ cents out of the rate to Milwaukee proper; that the local rate from Chicago to Milwaukee is 8½ cents, but the division received for that haul by the Chicago, Milwaukee & St. Paul Railway out of the rate from Elkhart to Milwaukee is 11½ cents. There is a difference in the minima, however, applicable to the local and proportional shipments, respectively, that has a tendency toward equalizing carload earnings under these rates. While it is true that local and proportional rates are not ordinarily comparable for the purpose of determining the reasonableness of a charge for transportation, comparisons of such rates, and comparisons of divisions received by the carriers, may be considered in connection with other evidence in determining the reasonableness of a particular rate.

The testimony is that the rate per ton per mile on vehicles from Elkhart to Milwaukee is considerably higher than from many other points in central freight association territory to Milwaukee, although the transportation is apparently under substantially similar conditions.

A witness for complainants compared the present rates from Elkhart to the first 92 points named in the Lake Shore tariff, taking all the points under the letters of the alphabet, a, b, c, and d. He stated that the rates to these points were very much less than they would be if governed by official classification rule 25, as is the rate from Elkhart to Milwaukee. The testimony is that to certain towns in the interior of Wisconsin on the lines of the Chicago, Milwaukee & St. Paul, and at a greater distance from Elkhart than Milwaukee, shipments which move over the lines of defendants through Milwaukee take lower rates than from Elkhart to Milwaukee. For instance, Plymouth, Wis., is 240 miles from Elkhart and Milwaukee 186 miles. The rate from

Elkhart to Plymouth is 21½ cents, made up of the proportional rate of 15½ cents to Milwaukee and 6 cents to Plymouth, as compared with 23½ cents from Elkhart to Milwaukee. No sufficient explanation has been made as to why the rate from Elkhart to Milwaukee is a class rate under rule 25, whereas the rates to more distant points are lower commodity rates. It was said in this connection that the Milwaukee proportional rate applying on shipments into Wisconsin was established to meet water rates across the lake. If this be true, it has not been shown why similar influences should not affect the rate to Milwaukee. If points in the interior of Wisconsin are entitled to lower rates on account of a competing cross-lake water rate, then Milwaukee would seem to be entitled to like consideration in order that it may not be subjected to unjust discrimination.

Upon consideration of all the circumstances and conditions appearing of record, we are of the opinion, and so find, that defendants' rate of 23½ cents per 100 pounds for the transportation of vehicles from Elkhart, Ind., to Milwaukee, Wis., is unjust and unreasonable so far as it exceeds 18½ cents per 100 pounds. An order will be entered requiring the establishment of a rate not in excess of that amount for the future. It was stipulated at the hearing that in case of an award of reparation the parties would agree upon the amount due upon shipments which have moved. Upon the submission of a statement of the amount due upon the basis herein announced, an order will be entered awarding reparation.

With respect to the question of the size of car required for the use of complainants, it is shown that cars 50 feet in length are desirable, and that the Lake Shore & Michigan Southern Railway publishes a rate and minimum weight applicable to 50-foot cars. The testimony shows but very few instances in which that defendant has failed to comply with complainants' orders for 50-foot cars. Its tariffs, however, do not contain a rule to the effect that when a carrier can not promptly furnish car of capacity or dimensions desired by the shipper, and for its own convenience furnishes two smaller cars, such cars may be used on the basis of the minimum weight of car ordered; it being understood that the shipper may not order a car of dimensions or capacity for which a minimum is not provided in the carrier's tariffs. This question has been discussed at length in the recent case of *Noble v. B. & O. R. R. Co.*, 22 I. C. C. Rep., 432. For reasons there stated we are of the opinion that the tariff should be amended to contain the provisions above outlined, and the order will require the establishment of a rule to that effect.

No. 3753.
BLUEFIELD SHIPPERS' ASSOCIATION
v.
NORFOLK & WESTERN RAILWAY COMPANY ET AL.

FOURTH SECTION APPLICATION No. 1561.

Submitted November 14, 1911. Decided February 13, 1912.

1. Upon all the facts disclosed by the record in this case the Commission finds that there are to-day at Roanoke, Va., competitive conditions beyond the control of the Norfolk & Western Railway which compel the maintenance at that point of the rates now in effect from Cincinnati, Columbus, Chicago, and Pittsburgh.
2. Defendants' present class rates and rates on grain and grain products from Cincinnati and Columbus to Bluefield, W. Va., and their present class rates from Pittsburgh to Bluefield, found to be unreasonable, and lower rates prescribed for the future; but such rates from Chicago to Bluefield not found to be excessive.
3. Present rates on iron articles from Pittsburgh to Bluefield, via Columbus, not found unreasonable.
4. The charging of higher rates at intermediate points than to Roanoke and points east, from Pittsburgh, Columbus, Cincinnati, Chicago, and kindred points, should be permitted so long as the present rates from these points to Roanoke, and points beyond, do not exceed those now in effect, provided that no higher rates are charged at Bluefield, and points to the west, than have been found reasonable from Cincinnati, Columbus, and Pittsburgh.
5. Present class rates from New York, Philadelphia, and Baltimore, via Hagerstown, to Bluefield found to be unreasonable, and lower rates prescribed for the future.
6. Suitable orders will be made in the various fourth section applications.

H. B. Arnold for complainant.

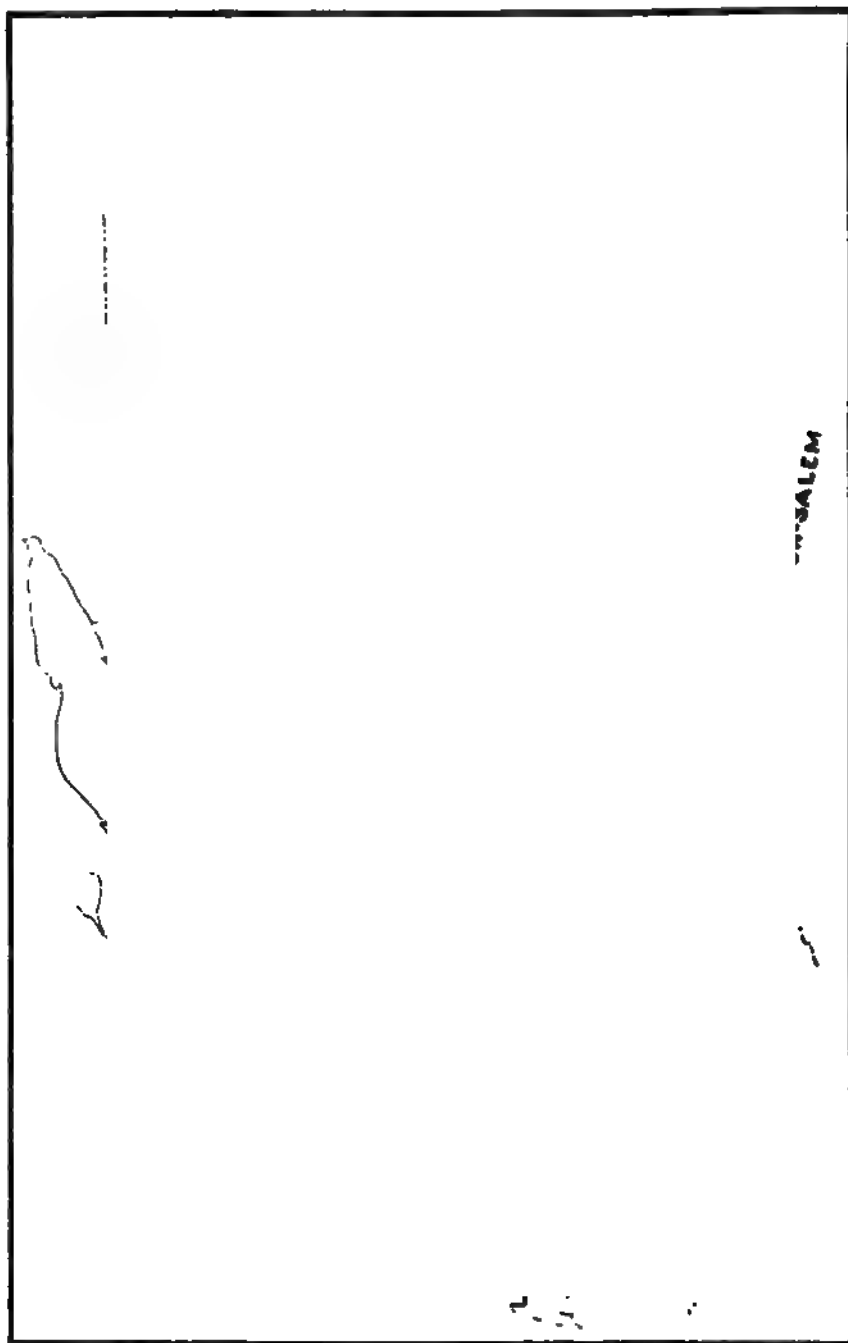
R. Walton Moore and *Frank W. Gwathmey* for Norfolk & Western Railway Company.

John T. Marchand for Interstate Commerce Commission.

REPORT OF THE COMMISSION.

PROUTY, *Chairman*:

This complaint puts in issue rates both from the east and from the west, to Bluefield, W. Va. With respect to rates from New York, Philadelphia, and Baltimore the allegation is that they are unreasonable *per se*, while those from Cincinnati, Columbus, Chicago, and Pittsburgh are assailed as unreasonable and also as in violation of the fourth section.



Bluefield is a local station upon the Norfolk & Western Railway, and the scheme of rates which is here under attack has been established by that carrier, which assumes, therefore, the burden of this defense.

The Norfolk & Western and its connections have filed an application under the fourth section for permission to continue to charge at intermediate points west of Roanoke, including Bluefield, higher rates than they apply at Roanoke. This fourth section application has been heard in connection with the complaint, and since the issue with respect to rates from the west is the same, the two will be considered together.

The accompanying map shows more clearly than any verbal description the exact issues presented in reference to these western rates. It will be seen that the Norfolk & Western Railway begins upon the west at Cincinnati and Columbus. From these points it extends to Portsmouth, Ohio, where it unites and proceeds easterly, crossing the Ohio River at Kenova and extending through Roanoke, Lynchburg, and Petersburg to Norfolk, its eastern terminus. The road from Columbus to Norfolk is known as the main line and is about 700 miles in length, but large amounts of traffic are handled from Cincinnati, which is also, to every intent, a main-line western terminus.

Bluefield is upon the main line, 205 miles east of Kenova and 105 miles west of Roanoke.

A branch of the Norfolk & Western extends from Radford southwest to Bristol, where a connection is made with the Southern Railway. Since the lines of this latter company reach Cincinnati, the Southern and the Norfolk & Western constitute together a second route from Cincinnati and points north through Bristol to Roanoke and other eastern destinations.

From Bluefield still another branch of the Norfolk & Western extends in the same general southwesterly direction to Norton, where it connects with the Louisville & Nashville. Since the lines of this company reach Louisville and Cincinnati, a third route is thus formed by which traffic between the west and the east passes over the Norfolk & Western to Roanoke and other points.

Joint rates apply and traffic is actually handled over all these routes by the Norfolk & Western Railway from Cincinnati, Chicago, and other points in central freight association territory to Roanoke and other eastern destinations, and all these routes are embraced in the fourth section application. Only the first or what may be termed the main-line route, is involved in the complaint, and that route will be first considered.

Rates from Cincinnati, Columbus, Chicago, and Pittsburgh to Roanoke and all points upon the main line of the Norfolk & Western east of Roanoke are the same. Many of these rates and perhaps all

Lynchburg, Norfolk, and the other Virginia cities wholesale into surrounding territory in competition with Baltimore. If the business is done through Baltimore the freight may reach that point by the Baltimore & Ohio but not by the Chesapeake & Ohio. If, upon the other hand, the business is distributed from one of the Virginia cities, it may be brought there by the Chesapeake & Ohio but not by the Baltimore & Ohio. Since the ability of these different centers to job into intermediate territory depends upon the relative rate of freight at which the supplies of a given city can be obtained, the Chesapeake & Ohio, in the protection of the interests of the communities served by it, has insisted that rates from the west to the Virginia cities shall not be higher than to Baltimore. The most westerly of these Virginia cities served by the Chesapeake & Ohio is Lynchburg, and that city for many years has been accorded by the Chesapeake & Ohio the Baltimore rate, which is the same as that to Norfolk, and which is generally known at the Virginia cities rate.

The first business handled by the Norfolk & Western between the west and the east came through Bristol, and until 1890 that railway had no other western outlet. The Norfolk & Western did not create the Virginia city condition, but found it when it became a factor in business between the west and the east. It could not, if disposed, obtain a higher rate from these western points of origin than is applied by the Chesapeake & Ohio, which with its connections reaches the points in the west and offers equally good facilities of transportation.

The Chesapeake & Ohio has, ever since the passage of the act to regulate commerce, observed the rule of the fourth section; that is, it makes no higher rate at any point upon its main line than that to a more distant point. Since it has in the past insisted upon maintaining the Baltimore rate at Lynchburg, notwithstanding that it was thereby compelled to reduce rates at all points west of Lynchburg, it must be assumed that this company will adhere to the same policy in the future and will maintain at Lynchburg the Baltimore or Norfolk rate. Clearly, the Norfolk & Western can not maintain a higher rate than its competitor between these points, and it must therefore be found that the Norfolk & Western does meet at Lynchburg competition which it can not control and which compels it to establish from these western points of origin the rates which it now observes.

The complainant insists that whatever may be the fact as to Lynchburg there is no such competition at Roanoke, and this is the serious question for determination in passing upon the fourth section application.

When the act to regulate commerce took effect, in 1887, the Norfolk & Western was to some extent handling business from the west through the Bristol gateway into and through Roanoke. At that

time Roanoke was served by an additional railway known as the Shenandoah Valley and being the line from Hagerstown to Roanoke which is now operated by the Norfolk & Western. That line crosses the Chesapeake & Ohio some 40 miles north of Roanoke, and rates from the west into Roanoke were made jointly by the Chesapeake & Ohio and the Shenandoah Valley. The rates so established from the west were the Virginia cities rates, and no higher rate was made to any intermediate point by that route.

This case shows that the Norfolk & Western did not meet the rates so established by the Chesapeake & Ohio at the outset, but in 1890 the Norfolk & Western obtained control of the Shenandoah Valley, and it then determined to establish by its line the same rates which had been previously in effect by this competing line. The Norfolk & Western had, by acquiring the Shenandoah Valley, put an end to all possible competition by rail at Roanoke, and its management did not deem it good policy to signalize this event by advancing the rates previously in effect.

There was undoubtedly then and has ever since been the further thought of market competition. Roanoke lies 54 miles west of Lynchburg, and after 1890 was served for 20 years by the Norfolk & Western alone. Its position enabled it to intercept a great amount of trade which would naturally otherwise go to Lynchburg, and it was therefore in the interest of the Norfolk & Western to build up at that point a commercial center served by it exclusively which could compete with Lynchburg, where the Norfolk & Western must contest for the business with its rival, the Chesapeake & Ohio.

Whatever the motive, the Norfolk & Western did, after acquiring control of the Shenandoah Valley, establish by its own line from the west at Roanoke the Virginia cities rates, which it has ever since and is still maintaining.

In 1892 the route through Norton was opened for business and the same year saw the completion of the line through Kenova, which gave the Norfolk & Western access to the west over what thus became its main line. The rates already in effect to Roanoke were continued by all these routes.

From 1890 down to 1909 the Norfolk & Western was the only line serving Roanoke, but in this latter year the Virginian Railway, running from Deepwater to Norfolk, was opened for business. This line passes through Roanoke, as will be seen by reference to the map, runs westerly and parallel with the Norfolk & Western for some distance, and connects with the Chesapeake & Ohio at Deepwater. The Virginian Railway now forms, in connection with the Chesapeake & Ohio, another line from the west to Roanoke, and it now maintains via this line at Roanoke the Virginia cities rate. The Chesapeake &

Ohio Railroad, as already said, observes the rule of the fourth section in the construction of its rates from these western points of origin to all points upon its main line east; that is, the rate to Deepwater, its junction with the Virginian Railway, is the same as to Norfolk and Lynchburg. The Virginian Railway does not observe the rule of the fourth section at points between Deepwater and Roanoke, but establishes to all these intermediate points rates which are higher than that to Roanoke. In this respect the practice of that railroad is exactly like that of the Norfolk & Western.

For many years that community has enjoyed the Virginia cities rate, and under the influence of that rate the commercial interests of Roanoke have developed. While the existence of a wrong can not, of itself, justify its continuance, and while the very purpose of the original fourth section and of this last amendment was to prevent discrimination like that before us, still, in determining what, under all the circumstances, is just and reasonable, in pursuance of the authority delegated to us by the amended section, we must certainly be to some extent guided by conditions as we find them.

This Commission has in two recent cases reached the conclusion that competitive conditions existed at Roanoke which did not obtain at points farther west and which compelled the observance of the rates now in effect. *Chicago Sash & Door Asso. v. N. & W. Ry. Co.*, 14 I. C. C. Rep., 594; *Corporation Commission of N. C. v. N. & W. Ry. Co.*, 19 I. C. C. Rep., 303.

In the latter case, which was carefully considered and but recently decided, we said:

With respect of the contention of complainant that as Roanoke was served by but one railroad company, competitive conditions do not exist there which in any manner compel the making of lower rates than to the North Carolina cities in question, which are served by two or more railroads, it is to be said that the rates from the west to Roanoke were put in effect April 5, 1887, by the Kanawha Dispatch, which was a fast-freight line operating over the Chesapeake & Ohio and its connections. The rates were published from Chicago to Roanoke via Basic, Va., in connection with the Shenandoah Valley Railroad. In 1890 the Norfolk & Western acquired the Shenandoah Valley road, over which the Virginia cities rates were applied to Roanoke, and accepted the rates as it found them, and they have remained in effect substantially without change to the present time. The industries and business of Roanoke were built up and have been maintained under the existing rate adjustment, and we are of opinion that it should not be disturbed at this time.

Those cases both arose and were submitted previous to the amendment to the fourth section of June, 1910. But while that amendment may affect the use to be made of the facts found, it could not alter the facts themselves. Upon a further and perhaps fuller view of this entire situation we hold that there are to-day at Roanoke competitive conditions which do not obtain at Bluefield and which compel the

maintenance at that point of the rates now in effect from the western points of origin here under consideration.

It should be noted that in deciding questions like that here considered, each case must stand upon its own facts, and no one situation can furnish an exact precedent for another.

The next question is, Have these competitive influences at Roanoke reduced the rates to that point from these points of origin in controversy below what would otherwise be reasonable? For if the rates to Roanoke are sufficiently high the same rates ought not to be exceeded at a point 105 miles west of that destination.

The Norfolk & Western crosses the Ohio River at Kenova. Generally speaking, rates from points in central freight association territory into territory south of the Ohio River are constructed by combination upon that river; that is, a rate to the river and a rate beyond are added together for the through charge. The defendant insists that this method might properly be followed in constructing rates from these points of origin to Roanoke, and that by this test the present rates to Roanoke are unreasonably low.

The distance from Kenova to Roanoke is 310 miles, and rates upon the classes and commodities involved are as follows:

Classes.						Grain.	Grain products.
1	2	3	4	5	6		
Cents. 54½	Cents. 47	Cents. 35½	Cents. 24	Cents. 20	Cents. 16	Cents. 12½	Cents. 13

It will be seen that these rates, which are considerably lower than would result from the application of the Norfolk & Western mileage scale in force upon that part of its system, are the same as those from Columbus to Roanoke. If, therefore, it is proper to construct these rates by combination upon the Ohio River, and if the mileage scale of the Norfolk & Western, which is lower than that in effect upon most southern lines, is to be taken as reasonable, then, clearly, these Roanoke rates are below what would otherwise be proper.

We do not think, however, that rates from points of origin in central freight association territory to points upon the main line of this railway should be constructed upon that theory. The mere fact that the Norfolk & Western Railway crosses the Ohio River at Kenova does not, in this instance, fix a point at which any artificial building up of this kind can begin. We should treat the main line of this railroad as one continuous operation from Columbus and Cincinnati to Roanoke. The line from Kenova to Roanoke runs through a mountainous country. It was expensive to construct

and is expensive to operate, but it is part of the main line of the Norfolk & Western, just as the mountainous sections of the Chesapeake & Ohio, the Baltimore & Ohio, and the Pennsylvania are parts of those systems. It originates an immense tonnage which is handled by that system, and it can not be said that the patrons of this railroad should pay rates of transportation which may be just and reasonable upon the general level of railroad rates in the south, where traffic is much less, than upon this part of the Norfolk & Western and where earnings are not at all comparable with those of this system. It is much more reasonable to compare the rates upon the main line with those upon the Chesapeake & Ohio and the Baltimore & Ohio, roads operating largely in competition with the Norfolk & Western and under very similar conditions.

Below is a statement showing certain comparative statistics for the year 1910 upon these three systems, and also the averages of Group III and Group IV:

	N. & W	C. & O.	B. & O.	Group III.	Group IV.
Average miles operated.....	1,945	1,937	4,434	26,064	13,806
Freight density..... tons..	3,456,296	3,161,307	2,711,666	2,020,779	1,098,029
Passenger density.....	93,095	117,061	172,165	157,573	82,260
Average distance freight hauled.... miles..	265	267	191	116	193
Average rate per ton per mile..... mills..	4.47	4.07	5.77	5.88	6.53
Average freight-train load..... tons..	635	701	442	457	423
Operating revenue per mile of road.....	\$18,028	\$16,127	\$20,048	\$15,582	\$9,132
Total operating expenses per mile of road..	\$10,821	\$9,777	\$13,831	\$10,651	\$5,665
Net operating revenues per mile of road....	\$7,207	\$6,350	\$6,217	\$5,201	\$3,477
Operating ratio..... per cent..	60.02	60.6	68.99	67.19	61.92

It will be seen from the above figures that the Norfolk & Western is fully as strong in every traffic and financial essential as either the Chesapeake & Ohio or the Baltimore & Ohio, that it is stronger than the average of Group III, which comprises the middle west, and very much above Group IV, embracing West Virginia, Virginia, and the Carolinas, in which the lines of the Norfolk & Western are mainly situated. It should also be observed that, territorially speaking, the Norfolk & Western is not properly a southern railroad, but that it either occupies, for the most part, a region peculiar to itself or competes with trunk roads like the Chesapeake & Ohio and the Baltimore & Ohio.

The favorable showing of the Norfolk & Western which appears from the above table does not result from the fact, as is sometimes the case, that this road consists of a single trunk line stem through which flows a great current of traffic which has been collected and is distributed by other lines of railway bearing to this line the relation of branches. The Norfolk & Western as a system has, as ordinarily stated, but a little over 700 miles of main-line track; treating Cincinnati as one of its western termini, 814 miles of main-line track, out

of a total mileage of more than 1,900 miles. The heavy tonnage per mile and the very satisfactory earnings per mile are computed not upon this main-line mileage but upon the entire mileage of the whole system.

Nor is it true here, as is sometimes the case, that the earnings of the Norfolk & Western are artificially increased by the diversion to that line of traffic which might well follow, under a different state of control, other avenues. This system largely originates the enormous tonnage which it handles. From all of this the inference must be drawn that while the course of the Norfolk & Western is, during a greater part of its extent, through southern territory, the road itself as a system is much more comparable with those in trunk line and central freight association territories.

At the same time it must be remembered that a large part of its traffic is coal and coke and that it handles a considerable amount of other low-grade freight. That part of its business moving under class rates is rather small as compared with other roads which make a similar traffic and financial showing, and this class business may not be handled upon its system to the same relative advantage that it is upon roads generally which show the same earnings.

Nor is it meant that in fixing rates upon the branch lines of this system, like those extending to Durham and Winston-Salem upon the south or to Hagerstown upon the north where the traffic is much lighter and operating conditions entirely different, the same rule should be observed. The rates under consideration are from points in the middle west to points upon the main line of the Norfolk & Western.

Rates to Roanoke, which may be restated here for convenience, are as follows:

To Roanoke from—	Classes.						Grain.	Grain products.
	1	2	3	4	5	6		
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Columbus.....	54½	47	35½	24	20	16	12½	13
Cincinnati.....	62	53½	40½	27½	23	18½	14	14½
Chicago.....	72	62	47	32	27	22	13	13½
Pittsburgh.....	54½	47	35½	24	20	16		

The distance from Columbus is 449 miles, from Cincinnati 456 miles, and for these distances the rates might well be the same. There is no standard by which these class rates can be exactly measured, and in determining what is reasonable or unreasonable a considerable latitude must of necessity be allowed to the carrier; but why rates over for the most part an identical route and for almost

exactly the same distance should differ by one-eighth requires some explanation, and none is afforded by the present record.

From Chicago to Kenova the distance is 431 miles, the first class rate 45 cents, the grain rate 10 cents. These class rates are established, as we understand it, upon the regular mileage scale obtaining over railroads generally in central freight association territory. That may not be true of the grain rate.

From New York to Pittsburgh the distance is 440 miles, the first class rate 45 cents, the rate on grain and its products 15 cents.

These rates from Cincinnati and Columbus to Roanoke, if tested by the standards prevailing in territory where operating conditions, earnings, etc., are substantially the same upon the average as upon the Norfolk & Western, would be distinctly too high, but as already suggested we do not feel that they should be put upon quite that basis.

Exercising our best judgment upon the facts before us, we hold that the present rates from both Cincinnati and Columbus to Roanoke are lower than they might reasonably be were it not for the competition which has induced them, but we feel that in so holding as to Cincinnati the extreme limit has been reached. We have been to a degree influenced by the feeling that some relation probably exists, although not disclosed by this record, between these rates from Columbus and Cincinnati which might to some extent be disturbed by a contrary holding, although such holding, in view of the conclusion reached upon the reasonableness of the rates to Bluefield, could be of no importance to that community.

The distance from Chicago to Roanoke is about 741 miles. The first class rate from Chicago to Cincinnati is 40 cents, the grain rate 10 cents. In line with the conclusion just reached that 54½ cents, first class, and 12½ cents, on grain and its products, from Columbus to Roanoke is unreasonably low, we must hold that the present class rates, beginning with 72 cents, first class, and the present grain and grain-products rates, 13 cents and 13.7 cents, respectively, from Chicago to Roanoke are lower than they might properly be.

The class rates from Pittsburgh to Roanoke are the same as those from Columbus. Traffic moving under these rates goes west from Pittsburgh to Columbus, a distance of 191 miles, and thence via Kenova to destination. Having already held that the rates from Columbus are unreasonably low, the same conclusion must all the more follow as to those from Pittsburgh.

In passing upon this fourth-section application we must inquire, in the third place, whether the rates to the intermediate point are reasonable.

It has been earnestly urged in other cases, although not much insisted upon in this particular proceeding, that in determining whether

relief shall be granted from the inhibition of the fourth section, this Commission should give no attention to the intermediate rate. If it be established that the long-distance rate is controlled by competition not existing at the intermediate point, which has forced the rate at the long-distance point below what it otherwise might properly be, then permission to make the higher charge at the intermediate point should be granted, without reference to the amount of that charge. It is said that this must be so, since the fourth section is aimed at the discrimination which results from the lower charge at the farther point and not at the inherently unreasonable intermediate charge.

To this view we do not assent. The statute forbids the making of the higher charge at an intermediate point, but provides that this Commission, upon investigation, may, in special cases, allow a deviation from that rule. We have held that the relieving power thus granted is not to be exercised arbitrarily, but that it is our duty to permit the higher intermediate charge whenever, under all the circumstances, the resulting rates will not contravene the act to regulate commerce in that they are unjust and unreasonable or unduly discriminatory. This embraces both the preference against the intermediate point and the rate which that point is required to pay. Congress has said to the carriers of interstate commerce by rail that they must not charge more for the short than for the long haul unless they can show to the satisfaction of this Commission that in so doing their rates do not violate the inhibition of the act as expressed in both the first and third sections.

It is said that we can deal directly, under the first section, with the intermediate charge if that be found unreasonable; but so can we deal directly with the discrimination under the third section, if that be found undue. It is no unreasonable burden to require a carrier to justify its rates at all points before it is permitted to practice this form of discrimination which has been particularly selected out and dealt with in the fourth section.

This does not mean that we should, in every case, undertake an exhaustive examination into the reasonableness of the intermediate charges, for this would be well nigh impossible. When no complaint exists as to the intermediate rates, and when an inspection of those rates by the Commission discloses nothing which seems to call for an investigation into their reasonableness, we may properly assume that they are just and reasonable, and proceed accordingly, but when, as here, complaint is made attacking the reasonableness of the intermediate charge, that must be investigated. If the present charge to Bluefield is found unreasonable a reasonable rate must be determined, and our order permitting a deviation from the fourth section must be

conditioned that no higher intermediate charge shall be observed than that found to be just. If, in the absence of investigation, the intermediate charges are assumed to be reasonable, our relieving order should be conditioned that the present charges shall not be exceeded.

This form of order does not establish a relation between the long-distance and the intermediate rate. If for reasons over which the Norfolk & Western has no control the Roanoke rate should be further reduced, that company might meet this reduction without any corresponding reduction at Bluefield, and, conversely, if the Roanoke rate were advanced the Norfolk & Western could not at the same time advance the Bluefield rate.

It should be further noted that this form of order is only applicable in cases where the rate at the long-distance point is absolutely fixed by causes over which the applicant for relief under the fourth section has no control. We hold in this case that the Norfolk & Western could not, if it saw fit, apply at Roanoke other than the Virginia cities rate without an undue sacrifice of its revenues. If, upon the other hand, the applicant for relief does control the long-distance rate, if that carrier can determine what effect shall be given to the competitive conditions which are supposed to justify the reduction at the farther point, then this Commission may also determine whether the carrier is justified in giving to those competitive conditions the effect which it does—may determine the effect which such conditions might properly have, and may fix the extent to which those conditions shall be given effect.

It is possible that cases might arise where, even though the long-distance rate were beyond the control of the applicant for relief, nevertheless some relation ought to be established between the rate to the more distant and those to intermediate points. The intermediate rate should not, for example, exceed the long-distance rate plus a reasonable local charge from the more remote back to the intermediate point, and should perhaps, in some cases, be even less. These questions will be disposed of when they arise.

The present rates to Bluefield are as follows:

To Bluefield from—	Classes.						Grain.	Grain products.
	1	2	3	4	5	6		
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Columbus.....	66½	55	42	31	26	21	17½	18
Cincinnati.....	68	55	42	32	27	22	19	19½
Chicago.....	84	72	55	39	33	27	18	18½
Pittsburgh.....	80½	73	55½	39	34	26		
Iron and steel articles.....				31	26	21		

Are these rates reasonable?

The distance from both Cincinnati and Columbus to Bluefield is substantially the same, being approximately 345 miles. We are of the opinion and find that the present rates from both Cincinnati and Columbus to Bluefield are unjust and unreasonable, and that the following rates are reasonable and ought not to be exceeded:

Classes.						Grain.	Grain products.
1	2	3	4	5	6		
Cents. 54½	Cents. 47	Cents. 35½	Cents. 24	Cents. 20	Cents. 16	Cents. 12½	Cents. 13

As already noted, the first class rate from Chicago to Cincinnati is 40 cents, to Columbus 41 cents, and this would produce upon the basis of the rates which we have found to be reasonable a combination of 94½ cents upon Cincinnati and 95½ cents upon Columbus. This Commission has repeatedly said that through rates should not be constructed by using the full combination. In the *Burnham-Hanna-Munger case*, 14 I. C. C. Rep., 299, we established a first class rate of 51 cents when applied to through business as compared with a 60-cent local rate; but subsequently, and upon further reflection, this difference was reduced to 5 cents, 21 I. C. C. Rep., 546. To hold the present first class rate from Chicago to Bluefield, which is 84 cents, unreasonable, we must shrink by more than 10 cents the combination of an extremely low rate from Chicago to Cincinnati with a rate just found reasonable from Cincinnati to Bluefield. While these present class rates and grain rates from Chicago to Bluefield are ample, we do not hold at this time that they are excessive.

In declining to reduce the rates from Chicago to Bluefield we are somewhat influenced by the belief that the present adjustment into this territory as a whole is sufficiently favorable and ought not, unless that seems necessary, to be disturbed. To most points upon both the main line and the branch lines of the Norfolk & Western between Kenova and Roanoke rates are higher than the Virginia cities rate by certain arbitraries, beginning at 12 cents first class and ending with 5 cents sixth class. Rates so constructed are applied at all points upon the Bristol and the Norton lines and also upon other branch lines of the Norfolk & Western in that section. This was said to result in a blanket rate to between five and six hundred stations.

While it may be that these rates to certain points upon the main line of the Norfolk & Western are somewhat high, they are distinctly favorable to the points covered as a whole. If it clearly appeared that Bluefield was charged an unreasonable rate under this blanket adjustment, it would be our duty to reduce it, but since the greatest

reduction which could properly be made, if Bluefield were considered by itself, would be so slight as to be almost inappreciable to the shippers of that locality, we feel that substantial justice is now being done, and that the present adjustment should not be disturbed.

Rates from Pittsburgh to Bluefield which are attacked by this complaint are made over the Pennsylvania lines from Pittsburgh to Columbus and from Columbus to Bluefield by the Norfolk & Western. Below are given the class rates which we have found reasonable from Columbus to Bluefield, the class rates from Pittsburgh to Columbus, the combination, and the present Pittsburgh rates:

	Classes.					
	1	2	3	4	5	6
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Columbus to Bluefield.....	54½	47	35½	24	20	16
Pittsburgh to —						
Columbus.....	33	28½	22	15	12	9½
Combination.....	87½	75½	57½	39	32	25½
Present rates.....	86½	73	55½	39	34	26

We are of the opinion and find that the present class rates from Pittsburgh are excessive, and that the following rates are reasonable and should not be exceeded for the future:

Class....	1	2	3	4	5	6
Rate....	79	68	53	35	29	22

There are at the present time in effect to Bluefield via this route, upon iron articles, classified as fourth, fifth, and sixth class, rates of 31, 26, and 21 cents, respectively, and these rates we hold to be just and reasonable. The above finding applies to the route via Columbus, no opinion being expressed as to what might be reasonable via Roanoke.

Under these holdings we shall permit the charging of higher rates at intermediate points than to Roanoke, and points east, from Pittsburgh, Columbus, Cincinnati, Chicago, and kindred points, so long as the present rates from these points to Roanoke and points beyond do not exceed those now in effect, and provided that no higher rates are charged at Bluefield and points to the west than have been found reasonable from Cincinnati, Columbus, and Pittsburgh.

The routes via Norton and Bristol, in which the Norfolk & Western is a link and with respect to which fourth section applications are now before us for disposition, are more circuitous than by the main line. Rates via these routes from Cincinnati, Chicago, and probably

from Columbus are the same as via the direct line. Not only are the distances by these routes from points of origin upon the Ohio River and north greater than via the main line of the Norfolk & Western, but the roads handling the traffic from the Ohio River to Norton and Bristol show, for the most part, very much less favorable traffic and financial conditions than those exhibited by the Norfolk & Western. Taking all things into account, it is clear that rates via these routes to Roanoke from points of origin in the west, including Cincinnati, are lower than they might reasonably be.

No attack has been made upon the intermediate rates, and our examination of those rates in connection with those to Bluefield indicates that they are not probably excessive, certainly to points upon the Norfolk & Western. We shall assume that the intermediate rates are reasonable without prejudice to the right of the Commission to at any time further examine that subject, and shall permit carriers by these routes to deviate from the rule of the fourth section so long as neither the Virginia cities rate nor the intermediate rates are advanced. Should carriers desire to increase their present charges either at the more distant or the intermediate point, or should shippers conceive that these charges are unreasonable, that question can be presented to the Commission for further consideration.

The final question is upon the inherent reasonableness of the present rates from New York, Philadelphia, and Baltimore to Bluefield. Those rates, together with rates from the same points to Roanoke, are given below:

	Classes.					
	1	2	3	4	5	6
To Bluefield from—	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
New York.....	99½	84	65½	46	40	30
Philadelphia.....	91½	78	60½	42	37	28
Baltimore.....	86½	73	55½	39	34	26
To Roanoke from—						
New York.....	68	50	51	32	28	20
Philadelphia.....	63	52	44	30	26	21
Baltimore.....	58	49	38½	27	23	19

An inspection of the above figures shows that rates from New York to Bluefield exceed those from New York to Roanoke by the following differentials:

Class.....	1	2	3	4	5	6
Differential....	31½	25	14½	14	12	7

The differentials in case of Philadelphia and Baltimore are substantially, but not exactly, the same.

The present rates from Hagerstown to Bluefield and Roanoke are as follows.

From Hagerstown to—	Classes.					
	1	2	3	4	5	6
Bluefield.....	Cents. 68	Cents. 55	Cents. 42	Cents. 32	Cents. 27	Cents. 22
Roanoke.....	54½	46	35½	24	20	16

Here the differentials of Bluefield over Roanoke are:

Class.....	1	2	3	4	5	6
Differential.....	13½	9	6½	8	7	6

Apparently, rates from Hagerstown to Roanoke and Bluefield are not influenced by any competitive conditions. The distance from Hagerstown to Roanoke is 240 miles, and the rates in effect are normal for that distance. There is no reason why the Bluefield rate may not have been made as much higher than that to Roanoke as, under all the circumstances, would be reasonable, and the rates as we find them must be taken as an expression of the opinion of the Norfolk & Western to that effect.

The vice-president of the defendant was asked to explain how it happened that the first class rate from New York to Bluefield exceeded that to Roanoke by 31½ cents, whereas in case of Hagerstown that difference was but 13½ cents. He was unable to give any explanation, nor was any ventured upon the argument.

The distances from these eastern points of origin to Bluefield are as follows:

	Miles.
New York.....	613
Philadelphia.....	523
Baltimore.....	408

We are of the opinion and find that the present rates from New York, Philadelphia, and Baltimore, via Hagerstown, to Bluefield are unjust and unreasonable, and that the rates given below are reasonable and ought not to be exceeded:

To Bluefield from—	Classes.					
	1	2	3	4	5	6
New York.....	Cents. 81½	Cents. 68	Cents. 57½	Cents. 40	Cents. 35	Cents. 29
Philadelphia.....	76½	61	50½	38	32	27
Baltimore.....	71½	58	45	35	30	25

If the disposition made of this case leaves in effect at Bluefield a discrimination, it may be observed:

First. The testimony before the Commission indicates that while, upon the face of the tariffs, there is a preference against Bluefield, still the effect of that preference is not especially noticeable. The rates paid by Bluefield are, or will be when our order in this case is complied with, just and reasonable in themselves, and jobbers at that locality do not seem to be seriously affected in competition with Roanoke and Lynchburg by the somewhat more favorable rates which those cities enjoy. In cases like this, where some one must suffer, it is pertinent to inquire how the least injury may be inflicted.

Second. If an undue discrimination is left in effect, it is because, under the law as it exists, no adequate method has been provided for its correction. Carriers are forbidden to agree upon competitive rates like those from the west to Roanoke and Lynchburg, and the Commission has no authority to fix a minimum charge. Under these circumstances it is impossible to establish and enforce rates which are relatively just to these different communities. The purpose of Congress seems to have been to keep alive competition of exactly the kind which is found at Roanoke, and which produces the lower rate at that point, upon the theory, probably, that while injustice may in some instances result the general effect is for the public good.

An order will be entered in No. 3753 establishing the rates found to be reasonable, and suitable orders will be made in the various fourth-section applications.

22 I. C. C. Rep.

No. 4299.

MEMPHIS FREIGHT BUREAU ET AL.

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.

Submitted February 5, 1912. Decided March 4, 1912.

Rates on cottonseed from various points in Missouri and Arkansas to Memphis, Tenn., found to be unreasonable and unduly discriminatory. Reasonable maximum rates prescribed.

T. K. Riddick for complainants.

S. H. West, Roy F. Britton, and J. D. Watson for St. Louis Southwestern Railway Company; Pine Bluff Arkansas River Railway; and Paragould Southeastern Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

In *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, 20 I. C. C. Rep., 33, the Commission condemned certain rates on cottonseed from points on the lines of defendant in the states of Missouri, Arkansas, and Louisiana to Memphis, Tenn., and prescribed maximum rates for the future.

As the complaint now considered is in substance and effect supplemental to that proceeding, we will not here repeat what was there said relative to the general situation and the reasons for prescribing lower rates.

In *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, *supra*, rates from points on defendant's main line as far north as and including Malden, Mo., were complained of. It now appears that because of lack of information as to points at which cottonseed is produced points north of Malden were not included in the original complaint, and the rates therefrom are now brought in issue.

It also appears that in the former proceeding complainant intended to include rates from points on the Paragould Southeastern Railway and on the Pine Bluff Arkansas River Railway, but as those companies were not named as defendants, the rates from those points were not passed upon.

In the instant case, complaint is made against the rates on cottonseed from points on the main line of the St. Louis Southwestern Railway as far north as Illmo, Mo., but in the record it is conceded that complainant is not interested in the rates from main-line points north of Bernie. Rates on the same commodity from points on the Cairo branch and the New Madrid branch of the St. Louis Southwestern Railway are also complained of as unreasonable *per se* and as unjustly discriminatory against Memphis and in favor of St. Louis and East St. Louis.

The rate on cottonseed to St. Louis and East St. Louis from all points on the St. Louis Southwestern Railway north of Malden to and including Illmo and from all points on the Cairo and New Madrid branches is 10 cents per 100 pounds; the rate from the same points to Memphis is 15 cents per 100 pounds. From Bernie, which is understood to be the most northerly main-line point at which cottonseed is produced, and from all points on the Cairo and New Madrid branches, the distances are less to Memphis than to East St. Louis. From Bernie the distances to Memphis and to East St. Louis are substantially equal. Counsel for defendants admitted on the argument that defendant St. Louis Southwestern would not seriously object to having the rate fixed in the former proceeding from Malden to Memphis extended to include Bernie.

The Paragould Southeastern Railway connects with the St. Louis Southwestern Railway at Paragould, Ark., and extends to Blytheville, Ark., a distance of 38 miles. The Pine Bluff Arkansas River Railway connects with the St. Louis Southwestern at Rob Roy, Ark., and extends to Reydel, Ark., a distance of 24 miles. It is admitted that these two lines are controlled by the St. Louis Southwestern, which owns all of the stock and bonds of the Pine Bluff Arkansas River Railway Company and 56 per cent of the stock of the Paragould Southeastern Railway Company.

All points on the lines of these subsidiary companies are substantially nearer to Memphis than to East St. Louis.

Without reciting all of the contentions and arguments, although same have been fully considered, and referring to our report and order in *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, *supra*, we find that the rates on cottonseed from main-line points on the St. Louis Southwestern Railway north of Malden, Mo., to and including Bernie, Mo., and from points on the Cairo and New Madrid branches, to Memphis are unreasonable and unduly discriminatory and that for the future they should not exceed 12½ cents per 100 pounds from said main-line points and 13½ cents per 100 pounds from said branch-line points.

In the former proceeding we found that a reasonable rate on cottonseed from Paragould to Memphis should not exceed 12½ cents per 100

pounds, and in fixing rates from branch line points we found a reasonable rate to be 1 cent higher than from the junction point of the branch line with the main line. We find that the rates on cottonseed from points on the Paragould Southeastern Railway to Memphis are unreasonable and unduly discriminatory and that for the future they should not exceed $13\frac{1}{2}$ cents per 100 pounds from stations Bard to Hornersville, inclusive, and should not exceed 14 cents per 100 pounds from stations Paepcke to Chickasawba, inclusive.

In the former proceeding we prescribed as a reasonable maximum rate on cottonseed to Memphis from Rob Roy, the junction between the Pine Bluff Arkansas River Railway and the St. Louis Southwestern Railway, $12\frac{1}{2}$ cents per 100 pounds. We find that the present rates on cottonseed from points on the Pine Bluff Arkansas River Railway to Memphis are unreasonable and unduly discriminatory and that for the future they should not exceed $13\frac{1}{2}$ cents per 100 pounds.

Reparation is prayed for in the complaint, but little or no attention was paid to that feature in the hearing or argument.

When the order in the previous case was complied with defendants reduced the rates from points on the Pine Bluff Arkansas River Railway and from points on the Paragould Southeastern Railway to Memphis, applying what they conceived to be a logical application of the principles underlying the Commission's findings. It appears that all, or practically all, of the cottonseed moving from stations on the Pine Bluff Arkansas River Railway goes to Pine Bluff, Ark., which is only 38 miles from the most distant of these stations and at which several cotton-oil mills are located. It appears that the movement of the cottonseed is largely influenced, if not controlled, by the ownership of the cotton gins and that such ownership of gins at stations on the Paragould Southeastern Railway induces the movement of the seed largely to the East St. Louis mills, the rates from these stations at the present time being the same to Memphis and to East St. Louis.

No reparation was involved in the former proceeding, and, in view of the voluntary reductions made by defendants from stations on these subsidiary lines at the time our former order was complied with, we do not find that complainants have been damaged by the present rates or that reparation is due them.

An order will be entered prescribing the future rates herein found to be reasonable.

22 I. C. C. Rep.

No. 4254.
ALAN WOOD IRON & STEEL COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL

Submitted February 8, 1912. Decided March 4, 1912.

1. Complainant owns and operates a modern steel plant in the Schuylkill Valley in Pennsylvania. Interchange tracks were constructed under agreements between complainant and defendants, some of them on land of complainant, some of them on land of defendants, and some of them partly on the land of complainant and partly on that of defendants, at the joint expense of complainant and defendants, and with the understanding that complainant would do its own switching to and from those interchange tracks. Complainant asks that defendants be required to perform the switching to and from loading and unloading points in the plant or make an allowance to complainant for performing that service.
2. At some steel plants in the Schuylkill Valley which are competitors of complainant, defendants perform the switching service, at other plants it is performed in part by defendants and in part by the owners of the plant, and at still other plants it is performed by the owners of the plant to and from interchange tracks; *Held*, That complainant has a right to demand that so long as defendants perform that service for competing plants in the Schuylkill Valley territory they shall perform the same service for complainant, but that under the facts in this case, complainant must exercise its right to terminate the agreements which it entered into for the construction of the interchange tracks and make proper refund to defendants of sums thus expended by them for that purpose which would not have been expended if defendants were to do the switching, before it can be heard to complain of unjust discrimination or to demand reparation; *Held further*, That without finding or even suggesting that switching allowances made by one of the defendants at Pittsburgh and at Johnstown, Pa., are lawful, or that they may not constitute undue discrimination against others, they do not subject this complainant to undue discrimination.

Clement B. Wood for complainant.

George Stuart Patterson for Pennsylvania Railroad Company.

William L. Kinter for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

In this proceeding complainant seeks the removal of alleged unjust discrimination in that defendants do not place or "spot" cars at

22 I. C. C. Rep.

loading and unloading points within its plant at Ivy Rock, Pa., the receipt and delivery taking place at so-called interchange tracks. The Commission is asked to prescribe the lawful practice and to award reparation.

Complainant corporation is engaged in the manufacture of iron and steel. It owns and operates a rolling mill plant at Conshohocken, Pa., on the tracks of and served by the Philadelphia & Reading Railway Company, hereinafter referred to as the Reading, at which the Reading has for many years switched, and now switches, cars without charge. This plant is not directly involved in this complaint.

Complainant also owns and operates a modern steel plant at Ivy Rock, Pa., at which steel billets are manufactured, and at which complainant owns and uses certain sidings and tracks. Ivy Rock is located on the east side of the Schuylkill River, 14.9 miles from Philadelphia, and is reached by the Schuylkill division of the Pennsylvania Railroad Company, hereinafter referred to as the Pennsylvania, and the Plymouth branch of the Reading. At Swedeland, on the opposite side of the Schuylkill River, are the blast furnaces of Richard Heckscher & Sons Company, the capital stock of which is owned by complainant.

The Upper Merion & Plymouth Railroad, 1.62 miles long, and which was completed about April 1, 1911, constructed a bridge across the river and operates between and in complainant's plants. Its tracks are connected with the sidings and tracks of complainant, and, through them, with the tracks of defendants. Since this line commenced operation it has performed the service of switching cars between points of loading and unloading at the plant and the interchange tracks.

A large volume of testimony, exhibits, and arguments as to details of plant and track construction, location, and operation is presented in the record. It appears that some of the tracks are on land owned by complainant and some of them on land owned by defendants. Whether on the land of defendants or of complainant, or partly on one and partly on the other, the tracks were constructed under arrangements mutually made between complainant and defendants. Some of complainant's interplant tracks are standard gauge and some of them are narrow gauge.

The Upper Merion & Plymouth Railroad is really an intermill road and is engaged principally in hauling materials between complainant's plants on either side of the river.

The Ivy Rock plant was completed and began operation about July 1, 1903. It was designed by an expert consulting engineer. Complainant admits that the layout of the tracks and sidings within

the plant was determined by complainant and its engineer without consulting defendants. It states in its reply brief that:

The original track arrangement was designed for the most economical possible handling of the freight from the railroads to the loading and unloading points, regardless of the ownership of the locomotive which would do the spotting. The arrangement of the sidings is comparatively simple, following a well-thought-out plan. The testimony was that the tracks were well laid out for the switching work.

A witness for defendants testified that the arrangement of the plant was the best he had seen.

Before the plant was completed negotiations were entered into with defendants for track connections. Those with the Reading resulted in the construction of a siding or turnout on the land of the complainant, connecting with the Plymouth branch of the Reading and the plant tracks. A small spur track connecting with this siding and with the tracks of complainant was also constructed, apparently primarily to connect complainant's so-called interchange tracks with the tracks of the Reading and with the long siding for storage purposes. The cost, which was entirely borne by the Reading, was \$10,979. The title to the ties and the rails is retained by the Reading, and the agreement under which the tracks were constructed is terminable by either complainant or the Reading on 90 days' notice.

The construction of these tracks was the outcome of correspondence in which a former president of complainant on April 15, 1903, wrote an official of the Reading:

What the Alan Wood L. & S. Co. want is a siding, connecting with their present system of tracks, and over which they can run their own engine, and do their own shifting, and which must be on their own property.

The original plan of the Pennsylvania for a track connection between its tracks and those of complainant contemplated that the Pennsylvania should spot cars at loading and unloading points. This plan was not acceptable to either the Pennsylvania or complainant. It was finally agreed to construct two tracks, and they were built on the land of the Pennsylvania at an expense to the Pennsylvania of \$7,463 and to complainant of \$7,088. Subsequently, in 1904, it was found that the two tracks were not sufficient and two more were built, partly on land of complainant and partly on that of the Pennsylvania, at an expense to the Pennsylvania of \$2,184, complainant doing the grading. These four tracks were constructed under agreements terminable by either party on 60 days' notice.

It clearly appears—in fact, it is conceded—that in building the plant and designing its trackage complainant had in contemplation that it was to perform the service of spotting cars from and to the interchange tracks. That also was the understanding under which the

interchange tracks were constructed. Complainant avers that it was not until 1906 that it became acquainted with the fact that defendants were performing the switching for other plants. As has been seen, however, such service had been performed for it at Conshohocken for a long period.

Beginning in May, 1906, and continuing at least until May, 1910, considerable correspondence passed between complainant and defendants, in which complainant stated that it was being discriminated against by failure of defendants to perform the switching service for it while they were performing it for complainant's competitors, and in which complainant demanded that defendants should perform the switching or make an allowance to complainant for performing it.

Defendants considered and construed complainant's position as simply demanding an allowance for the switching. But, taken by itself, or in connection with the testimony on that point, it seems that complainant did clearly demand the performance of the switching by defendants or the alternative of an allowance to complainant. We think, however, that this correspondence must, as will be later noted, be considered in connection with agreements and understandings between complainant and defendants, and with other actions of complainant.

On the question of unjust discrimination and undue preference defendants state in their brief:

'There is no dispute as to the practices of both defendants alleged by complainant to constitute an unjust discrimination against it. By a long-established custom in the Schuylkill Valley and vicinity, both defendants spot cars for loading and unloading at certain industries, some of which compete with complainant, such industries having sidings extended and multiplied with the increased number of buildings and having no interchange track.

But ask:

Does the spotting of cars by carriers upon spur sidings extended and multiplied with the growth of the industries at plants having no interchange tracks constitute unjust discrimination as against a complainant which has requested railroad companies to construct, or to connect with, its interchange tracks and which has expressly designed its plant trackage for the purpose of doing its own switching?

There is, we think, substantial similarity of conditions as between complainant's plant and other plants in the lower Schuylkill Valley at which defendants perform the switching. They are engaged in the manufacture of steel by the same process, are competitive, use the same raw materials drawn from the same sources, sell in the same markets, and pay substantially the same freight rates inbound and outbound. Complainant lays particular stress upon the conditions which exist at Coatesville, Phoenixville, and Pencoyd, Pa., where

defendants perform the switching. All of these plants, as compared with that of complainant, are old and represent a gradual growth. At some of them the loading and unloading points are more numerous and the mileage of sidings is greater than at Ivy Rock.

There are some exceptions to the general rule that the carriers do the spotting. For instance, high curvature on sidings in complainant's plant at Conshohocken requires the spotting of cars in part by the use of horses. At the tube works department of the Reading Iron Company at Reading, Pa., the Reading does not spot cars loaded with inbound freight. A greater amount of intermill switching and similar situations with respect to conditions under which the locomotives of the defendants must operate obtain at other plants. The length of sidings, the time required in switching, the number of deliveries, crews and engines are greater at other plants. The difference mainly relied upon by defendants is the presence or absence of designated interchange tracks.

Some steel plants are satisfied to have the carriers spot the cars as a service included in the transportation charge. Other steel plants, having interchange tracks, prefer for reasons of their own to switch and spot cars from such interchange tracks.

At the plant of the American Bridge Company at Pencoyd, which is directly in competition with complainant's plant, the Pennsylvania Railroad, since May, 1911, has received and delivered cars on the interchange track. The Reading does the switching at the north end of its tracks and receives and delivers cars only on the interchange track at the south end. It places cars of dolomite and coal for unloading on the track near the middle of the plant. Complainant admits that the present practice of the Pennsylvania at Pencoyd does not constitute a basis for complaint of discrimination against it. It does not, however, appear that the arrangement at Pencoyd is unsatisfactory to the mill people.

At certain plants the defendants deliver and receive carload freight on interchange tracks, among which are the Eastern Steel Company, Bethlehem Steel Company, Midvale Company, Pennsylvania Steel Company, United States Pipe Company, American Bridge Company, and the Sun Oil Company.

Defendants seek to make a distinction as to the duty resting upon them at plants where certain tracks have been designated and are used as interchange tracks, and at plants where such designation has not been made and such practice is not followed. They also seek to distinguish between the old plants that have grown gradually into large plants and where the performance of the switching originally undertaken has extended as the plant has grown, and modern plants that are constructed under plans for their complete and maximum operation.

The Reading considers that it would not be practicable for it to spot cars at Ivy Rock, because there would be constant interference by its locomotives with those of the Pennsylvania and of complainant. The Pennsylvania claims that on the present layout of the tracks connecting with the interchange it is not practicable for it to do the switching. This is denied by complainant, who alleges that it is not necessary that cars shall be placed at particular or specified hours. However, substantially the same situation obtains at other plants in the lower Schuylkill Valley and has not prevented the switching of cars at such plants by defendants. While inconvenience might be encountered, and while it is possible that if defendants performed the switching desired complainant might find the condition thereby created undesirable or intolerable, it does not appear that there is any insuperable difficulty in the way of the performance of that service by defendants. What complainant desires is that defendants shall either place the inbound loads at the proper points for unloading, and empty cars at the proper points for loading, and take the outbound loads from the loading places, or reimburse complainant for performing that service for itself.

That it is the carrier's duty to accord equality of service and equality of rates to all under substantially similar circumstances and conditions is beyond question. A carrier may not perform a switching service for one plant and decline to perform it at a competing plant in the same general territory on the ground that it is more convenient to perform the service at the one plant than at the other, or because it has been customary to do it at one and not at another. We do not think that the designation or the construction of an interchange track at one plant justifies the carrier in refusing to perform at that plant the same service which it performs at a competing plant where such interchange has not been designated or provided. We think that this complainant has the undoubted right to demand of these defendants the same services which they perform for complainant's competitors in the same territory.

The switching service here referred to is that necessary to the placing of inbound loaded cars at proper points for unloading, the placing of cars at proper places for loading, and the taking from points of loading outbound loaded cars. It does not contemplate interplant switching between the different buildings or tracks composing the plant and which is a necessary part of the conduct of complainant's interplant work or process of manufacture.

Complainant states its case in the following language:

Under section 15 of the act, the railroads under these circumstances might voluntarily give to the complainant an allowance covering the reasonable cost

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about performing the switching for itself and has an undoubted right to demand that so long as defendants perform that service for competing plants in the Schuylkill Valley territory they shall perform the same service for complainant, but we think that under the facts which have been noted complainant must exercise its right to terminate the agreements which it entered into for the construction of these interchanges and make proper tender of refund to defendants of sums thus expended by them for that purpose, and which would not have been expended if defendants were to do the switching, before it can be heard to complain of unjust discrimination, or to demand reparation.

Under the conditions disclosed by this record we are unable to find that complainant has been unjustly discriminated against because of failure of defendants to perform the switching in question.

The Reading makes no switching allowance to any industries on its line and is not involved in this part of the complaint.

At a number of industries at Johnstown and Pittsburgh, Pa., engaged in the manufacture of iron and steel, the Pennsylvania does not perform the switching or spotting of cars, but places them on interchange tracks of the industry or of a terminal railroad company owned or controlled by the industry and makes an allowance to the industry or to its terminal railway.

The Union Railroad Company serves various plants of the Carnegie Steel Company and the American Steel and Wire Company, and it is owned or controlled through ownership of its capital stock by the Carnegie Steel Company. This railroad performs the switching service and receives an allowance from the Pennsylvania out of the rate.

The Monongahela Connecting Railroad Company, affiliated with the Jones & Loughlin Steel Company, receives an allowance. Complainant avers that it comes into competition with the steel companies at Johnstown and Pittsburgh.

The only raw materials on which allowances are made at Pittsburgh or Johnstown and which are also used by complainant are limestone and ore. The quantity of ore used by complainant is inconsiderable. Complainant states in its brief that practically all its limestone comes from two stations in the state of Pennsylvania on the Reading.

Complainant relies upon *Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co.*, 21 I. C. C. Rep., 620. But that case was founded upon almost identically similar circumstances and conditions in the same territory. The plants in the Pittsburgh district, which includes Johnstown, are in a different and separate rate territory both as to

inbound materials and outbound products. Neither of the defendants makes any switching allowance in the Schuylkill Valley. Complainant is on an equality with all others under the same circumstances and conditions in that respect.

Without finding or even suggesting that the allowances which are made at Pittsburgh and at Johnstown are lawful, or that they may not constitute undue discrimination against others, which questions are at issue in an investigation which we are now conducting, we are of the opinion that they do not subject this complainant to undue discrimination.

The complaint will be dismissed.



No. 4297.

MEMPHIS FREIGHT BUREAU ET AL.

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY.



No. 4297 (Sub-No. 1).

SAME

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.



Submitted February 5, 1912. Decided March 4, 1912.



1. Rates on cottonseed from various points in the states of Missouri, Arkansas, and Louisiana to Memphis, Tenn., found to be unreasonable and unduly discriminatory. Reasonable maximum rates prescribed.
2. Rates on cottonseed from points in Oklahoma to Memphis, Tenn., found to be unduly discriminatory against Memphis and in favor of St. Louis, Mo., and East St. Louis, Ill. Nondiscriminatory relationship of rates prescribed.

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T. K. Riddick for Memphis Freight Bureau.

Henry G. Herbel and *B. M. Flippin* for St. Louis, Iron Mountain & Southern Railway Company.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

A. R. Bragg for Merchants' Freight Bureau of Little Rock, Ark., and Arkansas Cotton Seed Crushers' Association.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

These complaints attack as unreasonable *per se* and as unjustly discriminatory against complainants and in favor of competing manufacturers at St. Louis, Mo., East St. Louis, Ill., and at various mill points in the states of Arkansas, Louisiana, and Oklahoma defendants' rates on cottonseed from points on their lines in the states of Missouri, Arkansas, Oklahoma, and Louisiana, to Memphis, Tenn.

The contention of complainants may be summed up in the statement that the rates should be established on a distance basis, using the rates contained in the so-called "Arkansas court tariff."

Several years ago the state rates in Arkansas were those which had been prescribed by the railroad commission of that state. They were attacked in the courts as confiscatory, and a temporary injunction was granted restraining their enforcement. The railroads then established rates which were vigorously protested against by the state authorities. Thereupon, the state commission and the representatives of the railroads, acting upon a suggestion from the federal court, made up a tariff which was intended to provide 33½ per cent more revenue on the intrastate business of Arkansas than had been earned under the enjoined state tariffs. The tariff so prepared has been commonly known and designated as the court tariff.

Complainants contend that the rates in the court tariff, being in the nature of a compromise between the rates which were enjoined and those which were voluntarily established by the railroads after the injunction was secured, are reasonable.

We will not go into detail as to the litigation relative to these state rates farther than to say that it appears that after the court tariff was prepared all of the roads except the St. Louis, Iron Mountain & Southern, hereinafter called the "Iron Mountain," and the St. Louis Southwestern agreed to try it for a period of one year with the understanding that if the resulting revenue was not as much as was expected the railroads might reinstate their cases in court, and if the revenues were believed by the Arkansas commission to be unrea-

sonably high they might ask to have the cases reopened. At the expiration of the year the carriers asked for reinstatement of their cases, and they are now in litigation in the federal courts. The cases of the Iron Mountain and the St. Louis Southwestern stand for determination by the Supreme Court on the petition for permanent injunction.

The Merchants' Freight Bureau, of Little Rock, Ark., and the Arkansas Cotton Seed Crushers' Association intervened, resisting the complaint, more especially the petition to have the Arkansas court tariff taken as a basis for the interstate rates.

It is testified that more cottonseed is crushed at Memphis than at any other point in the United States and this is said to be so "by reason of its location in the center of the largest cotton-producing section."

It appears that the strongest competition which the Memphis dealers meet in the purchase of cottonseed is that of the mills at St. Louis and East St. Louis, especially at points on the St. Louis & San Francisco, hereinafter termed the "Frisco." The competition at stations on the Iron Mountain is said to be "principally a local mill proposition."

Complainants allege that the Iron Mountain discriminates against Memphis in favor of St. Louis by maintaining from certain of its stations to St. Louis commodity rates, while shipments from the same stations to Memphis, a shorter distance, are subject to substantially higher class rates.

The Iron Mountain admits that this allegation is true, but says that it is—

due to the fact that in times past no absolute necessity therefor seemed apparent, as Memphis was provided with a full line of commodity rates from Arkansas, Louisiana, and Oklahoma points. Its main source of supply was from eastern Arkansas, from which points relatively low rates obtained, whereas St. Louis was practically limited in securing its supply from points in southeastern Missouri and northern Arkansas.

The discrimination alleged against Memphis and in favor of local points in Arkansas grows out of the fact that the rates to the local points are the court tariff rates, and the rates to Memphis the higher voluntarily established interstate rates.

Each of the complaints is accompanied by an exhibit which is made a part of the complaint showing certain points of origin, distances and present rates therefrom, etc., and the prayer is for the establishment of reasonable and nondiscriminatory rates from those points to Memphis.

Numerous and exhaustive exhibits are filed in the record, but the following table of comparative distances and comparative rates in

cents per 100 pounds as between Memphis and St. Louis is illustrative of the situation:

From—	To Memphis.		To St. Louis.	
	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Iron Mountain stations:				
Bethel, Ark.....	108	11.5	224	15
Knobel, Ark.....	129	14.5	198	14
Tuckerman, Ark.....	126	14.5	253	15
Neeleyville, Mo.....	146	29.5	184	11
Oxly, Mo.....	157	30	196	12.5
Grays Ridge, Mo.....	195	32	193	10
Oran, Mo.....	240	34	158	10
Luckett, La.....	331	21.5	564	25
Nugent, La.....	355	22.5	588	25
Van Buren, Ark.....	306	21.5	501	25
Wagoner, Okla.....	389	23.5	585	25
Frisco stations:				
Marion, Ark.....	10	6	296	18.5
Hardy, Ark.....	126	13	364	15
Thayer, Mo.....	144	13	346	18.5
Pittman, Mo.....	124	12	222	12
Shade, Mo.....	87	10	218	10
Bloomfield, Mo.....	163	10	175	10
Le Panto, Ark.....	41	8	298	18.5

From numerous points in Arkansas the Iron Mountain carries rates to Memphis and no rates to St. Louis. The Frisco apparently carries a full line of rates to both places.

A witness for complainants testified that the rates from southeastern Missouri to St. Louis and East St. Louis were the lowest known to him “except the rate on cottonseed from St. Louis to Louisville,” and that while in most instances the rates to Memphis were the same as to St. Louis the distance to St. Louis was double that to Memphis.

Defendants’ witnesses admitted that the rates to St. Louis and East St. Louis are “very low” and “unreasonably and even absurdly low.” An Iron Mountain witness says that these low rates were established for the Brown Oil Company, located at St. Louis, because it was necessary to go nearly 200 miles south of St. Louis before reaching points at which cottonseed is produced. He testified that he did not consider the adjustment fair; that he would like to advance the rates to St. Louis; that he had once prepared a tariff proposing to advance them, but that he had not been permitted to make it effective because of complaints from the St. Louis mills. The Frisco defends the low rates to St. Louis on the plea that they were fixed when it came into that territory and met the conditions as it found them. Defendants’ witness admitted that the rates are discriminatory in the sense that they are higher for like distances, but expressed the opinion that the rates to Memphis are low rates, and said that the lower rates to St. Louis were forced upon them and they could not help it.

Reference was made to a rate on the Frisco from Mammoth Springs, Ark., to Kansas City, Mo., a distance of 342 miles, of 15

cents per 100 pounds. This rate was established several years ago when one or two mills were operating at Kansas City, but it appears that those mills are no longer operated and that no cottonseed moved last year to Kansas City via the Frisco.

With relation to the rates to Kansas City defendants' witness testified that in his opinion a mill located so far from the cotton-growing territory could not possibly get along on any rate which a railroad can afford to make. He said that this was measurably true of mills located at St. Louis (and what is true of St. Louis must be equally true of East St. Louis) but he differentiates the St. Louis situation from that at Kansas City by the fact that the mill at St. Louis was established when the industry was young and when there was not much competition.

The following table made up by the Frisco is indicative of the effect which the present rate adjustment has upon the movement of cottonseed:

Statement of movement of cottonseed, carload, from Missouri stations on the Frisco, from September 1, 1910, to August 31, 1911.

From—	To Memphis.		To East St. Louis and National Stock Yard.	To St. Louis.		Total cars.
	Miles.	Cars.	Cars.	Miles.	Cars.	
Campbell	124	4		210	4	8
Clarkton	123		6	204		6
Caruthersville	95	15		221	14	29
Holcomb	122	1	2	210		3
Holland	78		28	227	15	43
Kennett	110	1	2	222	1	4
Malden	131	1		212		1
Marston	113		7	192	8	12
Naylor	131			212	2	2
Portageville	106		25	191	6	31
South	119	2	30	232		32
Stock	40	17	19	225	14	50
Frisco	118		2	110		2
Total cars		41	121		61	223
Average distance of stations from which shipments moved	112.1		213.4	214.7		

The Frisco stations from which cottonseed is shipped are confined to the southeastern corner of Missouri and to points on its main line in the northeastern corner of Arkansas. The testimony shows that when the Frisco acquired its lines in southeastern Missouri the ruling rate of the Iron Mountain from stations in that territory to St. Louis was 10 cents per 100 pounds; that the Frisco applied that rate from its stations down to its east and west branch line through Kennett and Caruthersville and established a rate of 12 cents per 100 pounds to St. Louis from Missouri points south of that line; that the 10-cent rate from points north of this line was effective except from a few

unimportant stations on the Malden branch; and that from points south of that line the rate to Memphis was made 9 cents per 100 pounds as compared with 12 cents to St. Louis. This latter statement is not correct as to the present rates.

It appears clearly that many of the rates here complained of were established for the purpose of "protecting" or "taking care of" local mills.

The Frisco asserts that its rates to Memphis are the same as the court tariff rates up to distances of about 35 miles, and these rates are not complained of; that from about 35 miles up to 100 miles the rates to Memphis are 1 cent higher than the court tariff rates; that for greater distances the differences are greater because the voluntary scale is followed instead of the court tariff scale; and that the Memphis rates generally are not higher for like distances than those prescribed in Texas by the Texas commission, or than the interstate mileage scale applying between points in Oklahoma and points in Arkansas, or between points in Arkansas and points in Missouri.

Complainants show that defendants' rates to Memphis from the points here considered are higher than are charged for like distances by the lines east of Memphis. No evidence as to the operating conditions is presented except computations made up from the Commission's statistics of railways, from which it appears that the average rate per ton per mile on the east-side lines is 8.15 mills, while that of the Frisco is 9.79 mills; that the average density of traffic in tons on the east-side lines is 817,839, while that of the Frisco is 513,085. Similarly group 5, which embraces the east-side lines, shows rate per ton per mile of 8.24 mills and tonnage density 629,050 tons, as compared with group 8, which embraces the west-side lines, of per-ton-per-mile rate 9.81 mills and tonnage density of 508,557 tons. While it is not improper to consider the rates of the east-side lines in a comparative sense, we do not think that they can be considered as controlling.

Another statement shows that prior to the establishment of the railroad commission of Arkansas in 1900, defendants' voluntarily established rates to Memphis were lower than their present rates.

The question of the transportation cost from point of origin of the seed to destination of the products is discussed, as is also the per-ton-per-mile rate on cottonseed in comparison with rates on other commodities of substantially similar value.

It appears that the movement of the seed is largely controlled by ownership of gins and that both gins and oil mills are to a considerable extent owned by manufacturing interests that need and use the oil. It follows, therefore, that the milling points to which the seed shall go and the points to which the products shall go are largely controlled by this ownership, and that the movement will be in

accordance with the wishes of the owners regardless of slight differences in freight rates.

These facts detract from the force and value of comparison between the rates on cottonseed and those on other commodities of similar value.

It is testified that the seed-crushing mills operate only about five months during the year because the capacity of the mills far exceeds the available supply of seed. It also appears, despite that fact, that additional mills are being constructed by manufacturers who use the products in their manufacturing processes.

This traffic must move over a bridge across the Mississippi River in order to reach Memphis and defendants have to pay a bridge arbitrary of $1\frac{1}{2}$ cents per 100 pounds thereon, which fact is relied upon as justifying somewhat higher rates than would otherwise obtain. Complainants urge that much of this traffic to St. Louis and East St. Louis must also cross a bridge across the same stream at St. Louis, and that whatever bridge arbitraries are charged should be absorbed by defendants. In *Memphis Freight Bureau v. St. L. S. W. Ry Co.*, 20 I. C. C. Rep., 33, we found that the bridge arbitrary at Memphis was a factor which was entitled to consideration.

Complainants' witnesses admit that it is undesirable to have the rates on cottonseed to the various milling points based entirely on distance, although they, of course, contend that that factor should not be entirely overlooked. They admit that if the rates were established purely on a distance basis the mills at St. Louis and East St. Louis could not get any seed at all.

As has been stated, common ownership of gins and of seed-crushing mills strongly influences, if it does not control, the movement of the cottonseed; that is, if a mill company at St. Louis and a mill company at Memphis both have gins at a common point in Arkansas, the seed from their respective gins will move to St. Louis and Memphis, respectively, regardless of a slight difference in the freight rates.

Defendants argue that unless real substantial injustice results to Memphis under the present adjustment the Commission should not, even if it has that power, make an order that would shut St. Louis mills out of competition. They also argue that if discrimination against complainant does exist it is not unjust, but only such as arises from the fact that other points are geographically more advantageously situated. It may be true that certain interior milling points are more advantageously located than is Memphis, but it can hardly be said as to this traffic that St. Louis or East St. Louis is as advantageously located as is Memphis.

It is suggested that the rates from southeastern Missouri to St. Louis are state rates and are not, therefore, to be taken as a measure of unjust discrimination in interstate rates. It does not, however,

appear that the rates of these defendants on cottonseed from southeastern Missouri points to St. Louis are fixed by state authorities. The rate is almost uniformly the same to St. Louis from these various points.

In view of the litigation now pending as to the Arkansas state rates and the fact that the mills at St. Louis and East St. Louis must of necessity go farther for cottonseed than do the Memphis mills, and in view of our findings in *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, *supra*, we are not willing to take either the Arkansas or Missouri state rates as a rule by which to measure the interstate rates.

The evidence as to the unreasonableness of the rates complained of was, in the main, comparisons with other rates and comparisons with rates on the same commodity to other points, and the evidence of discrimination against Memphis was also mainly comparisons of rates to other points. When it appears that a carrier gives to one point substantially lower rates for substantially the same service than it accords to a competing point, those comparisons are forceful, and in the absence of modifying conditions might well be considered as conclusive. In *T. & P. Ry. Co. v. I. C. C.*, 162 U. S., 197, the Supreme Court of the United States said:

In passing upon questions arising under the act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and in the exercise of its jurisdiction the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment.

These complaints raise as to these defendants substantially the same issues that were decided in *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, *supra*, as to the defendant therein. The points of origin are in the same general territory but on the lines of competing carriers, and the destination is the same.

In view of the facts which have been noted and the general situation that has been described, the findings in *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, *supra*, and on the whole record, we find that the rates of defendant St. Louis, Iron Mountain & Southern Railway Company on cottonseed to Memphis are unjustly discriminatory and unreasonable to the extent that they exceed the following, in cents per 100 pounds, which will be prescribed for the future as maximum rates:

From stations—	Cents.
Texarkana, Ark., to Gurdon, Ark., excluding Gurdon.....	14
Gurdon to Little Rock, Ark., both inclusive.....	13.5

the rates complained of are higher than the court tariff rates, we can not concede that the allegation of unreasonableness has been abandoned by complainants.

We find that the rates of defendant St. Louis & San Francisco Railroad Company on cottonseed from the following named points to Memphis are unreasonable and unjustly discriminatory in so far as they exceed the following in cents per 100 pounds, which will be prescribed as reasonable maximum rates for the future:

From stations—	Cents.
Kennett, Mo., to Leachville, Ark., excluding Kennett.....	11
Wardell, Mo., to Deering, Mo., inclusive.....	10
Hardy, Ark., to Thayer, Mo., inclusive.....	12
Walnut Ridge, Ark., to Keller, Ark., inclusive.....	11
Keller to Naylor, Mo., excluding Keller.....	11.5
Baird, Mo.....	11

In fixing these rates for both defendants we have given consideration to all of the conditions and endeavored to prescribe an adjustment that is reasonable and just to all interests concerned. We have not prescribed rates from stations except where the existing rates are found to be unreasonable and unjustly discriminatory. It is not expected that in effecting this new adjustment defendants will increase any existing rates. It is expected that rates from intermediate points not specified will be adjusted in conformity with those here prescribed.

An order will be entered in accordance with these findings.

Reparation is asked for in the original petitions, but that point was not pressed at the hearing. No testimony with regard to it was offered and it was not referred to either in briefs or on argument. We must regard our conclusions in *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, *supra*, as substantially controlling in this situation. No reparation was awarded in that case or in *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, 22 I. C. C. Rep., 537, and we do not regard the instant cases as justifying an award of reparation.

22 I. C. C. Rep.

No. 4193.

IN THE MATTER OF RATES, RULES, REGULATIONS, AND PRACTICES OF, ABSORPTIONS MADE BY AND PROVIDED FOR IN TARIFFS OF THE LOUISIANA RAILWAY AND NAVIGATION COMPANY WITH RESPECT TO THE TRANSPORTATION OF SUGAR.

Submitted March 1, 1912. Decided March 4, 1912.

1. Defendant has on file a "local import tariff" applying on sugar "imported from foreign countries and from United States insular possessions received through New Orleans, La., or Port Chalmette, La." to Gramercy, La. The rail haul from New Orleans or Port Chalmette to Gramercy is wholly within the state of Louisiana. When the sugar is being loaded into vessel at foreign port the New Orleans agent of the Gramercy refinery is notified and he notifies agent of the railroad to prepare for its prompt movement to Gramercy. He pays the customs charges and receives an order from the customs officer for the steamer to deliver the sugar to him. He turns that order over to the agent of the railroad, and the railroad thereupon loads the sugar into its cars at the wharves, has it switched to its terminal, and transports it to Gramercy; *Held*, That the rail transportation is subject to the federal act.
2. On complaint that the rail carrier is transporting this sugar at less than the cost of the service and thereby effecting discrimination against sugar refinery at New Orleans; *Held*, That under the tariff as amended subsequently to the institution of the inquiry the service is not performed at less than cost and that the practice does not effect undue discrimination.

Joseph W. Carroll for American Sugar Refining Company.

Emerson Bentley for Louisiana Railway & Navigation Company.

E. Howard McCaleb for Colonial Sugars Company.

W. M. Barrow for Railroad Commission of Louisiana, intervener.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Informal complaints having been received to the effect that certain tariffs and practices of the Louisiana Railway & Navigation Company, hereinafter called defendant, were unjustly discriminatory in favor of the refinery of the Colonial Sugars Company at Gramercy, La., and unjustly discriminatory against sugar refineries at New Orleans, and it appearing that defendant had on file here a

tariff covering transportation of imported sugar from New Orleans or Port Chalmette, La., to Gramercy, La., under which absorptions were provided for which amounted to substantially all of the revenue earned under the tariff, and might in some instances exceed the gross revenue, the Commission instituted this inquiry.

On December 24, 1909, defendant issued, effective January 31, 1910, its tariff, I. C. C. No. A-448. This publication was by its title a "local import tariff," and its terms were confined to the transportation in carloads of sugar "imported from foreign countries and from United States insular possessions received through New Orleans, La., or Port Chalmette, La.," to Gramercy, La. The rate from ship side New Orleans or Port Chalmette to Gramercy was 1½ cents per 100 pounds on a carload minimum of 36,000 pounds.

The tariff provided that the rate included the switching charges of connecting lines in New Orleans and from Port Chalmette to New Orleans, the cost of loading sugar from wharves to cars in New Orleans or Port Chalmette not to exceed three-fourths of 1 cent per 100 pounds, wharfage charges for use of wharves in New Orleans 2 cents per ton of 2,000 pounds for the first 3 days and 1 cent per ton per day for the next 3 days, not exceeding 9 cents per ton for the first 6 days, and thereafter no charge for 30 days, shed charges in the sheds on the wharves, if used, 1½ cents per ton, and harbor dues ranging from \$2.50 each for vessels under 100 tons to \$15 each for vessels of 500 tons and over.

An investigation made by one of our examiners as to three cargoes of sugar transported under this tariff showed that on those cargoes defendant received revenue above its absorption of charges thereon, respectively, of \$91.54, \$104.50, and \$78.29. This was an average of revenue above absorptions of \$91.44 per cargo, 75 cents per carload, and 2.32 cents per ton. A further analysis showed that if the maximum absorptions provided in the tariff were made they would amount to 32.12 cents per ton, as against gross earnings of 30 cents per ton.

The tariff above referred to was superseded April 28, 1911, by defendant's tariff, I. C. C. No. A-510, which is still in effect. This tariff bears the same title, applies on the same traffic, contains the same rate of 1½ cents per 100 pounds ship side New Orleans or Port Chalmette to Gramercy, and provides for the absorption of switching charges of connecting lines in New Orleans or from Port Chalmette to New Orleans, and the cost of loading from wharves to cars in New Orleans or Port Chalmette not to exceed three-fourths of 1 cent per 100 pounds.

The railroad commission of Louisiana intervened, and in conjunction with defendant questions the jurisdiction of this Commission over the traffic in question.

The manner in which this traffic is handled is stated in the testimony of the New Orleans representative of the Colonial Sugars Company, as follows:

After the grinding season is over, the Cuban-American Sugar Company sends a lot of sugar from their estates in Cuba and consigns it to us at New Orleans—consigned to the Colonial Sugars Company at New Orleans. That sugar is billed to us, and when I know that that sugar is being loaded at one of the estates I notify Mr. Haddick, freight agent of the Louisiana Railway & Navigation Company, in order that he should provide equipment to move that cargo quickly. On arrival of the cargo, the first thing we have to do is to pay the duty to the United States Government to get possession, and beyond that, turn over to the collector of the port our bill of lading, so as to show that we have possession of the sugar. The duty is paid on a consummated test—ninety-six test, as a rule—and then an order is given us on the deputy at the steamer—the United States deputy—to deliver that sugar to us, and we turn—I turn that to our agent, who is there, and attends to the unloading of the ship, and he in turn gives it to the Louisiana Railway & Navigation Company. That is all, I think.

Original steamship bills of lading filed in the record show that these cargoes are consigned to the Colonial Sugars Company at the port of New Orleans. It appears that the sugar is received from the steamship at New Orleans by the agent of the Colonial Sugars Company, who accepts constructive delivery and possession of it; that he gives directions to defendant to move it to Gramercy; that defendant loads it from the wharves to its cars and transports it to Gramercy. It is argued that the rail transportation is entirely within the state of Louisiana and therefore outside the jurisdiction of the federal act. It is to be noted, however, that when the sugar is being loaded into the steamship at point of origin, the agent of the Colonial Sugars Company is notified of that fact and that he notifies defendant in order that it may provide equipment with which, on arrival of the cargo at New Orleans, to promptly move it to Gramercy. There is no showing and no pretense that the sugar is loaded in the vessels at point of origin with any other intent than that it shall move to Gramercy. Generally and usually the sugar which goes to Gramercy is destined to go to Gramercy when it is loaded at the foreign port. Only one instance is cited in which the sugar did not go to Gramercy, and that was some molasses sugar which constituted only part of a cargo.

The title of defendant's tariff, the character of the traffic to which it applies, and the fact that it was voluntarily filed with this Commission by defendant have been noted.

It is suggested that if the sugar were shipped from a foreign port to New Orleans and there delivered by the steamship company to the rail carrier for transportation to Gramercy under the terms and conditions usually applying to the handling of traffic by connecting carriers, the traffic would be subject to the terms of the federal act.

If this sugar were brought to New Orleans as it is, were there received by its owner or his agent, and later, as an independent transaction, it should be shipped by rail to some point in Louisiana and did not move outside the confines of that state on such journey, it would hardly be claimed that such rail movement subjected the traffic to the provisions of our act, but as has been noted, this traffic is not so handled. It leaves the foreign port with the full intention on part of its owners and shippers to send it on to Gramercy by rail. There is no common arrangement between the water carrier and the railroad, and the traffic does not move under a through bill of lading from the foreign port to Gramercy. But arrangements for its transportation to Gramercy by rail are made before the vessel reaches New Orleans, and, under instructions of the agent and the owner of the sugar, defendant takes it from the wharf where it is left by the steamship company, loads it into its cars, and transports it to Gramercy, thus carrying out the original intention entertained at the time the sugar is loaded in the vessel at the foreign port. In *Southern Pacific Terminal Co. v. I. C. C. and Young*, 219 U. S., 498, the Supreme Court of the United States said:

It makes no difference, therefore, that the shipments of the products were not made on through bills of lading, or whether their initial point was Galveston or some other place in Texas. They were all destined for export and by the delivery to the Galveston, Harrisburg & San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the terminal company being a part of the railway for such purpose. The case, therefore, comes under *Coe v. Errol*, 116 U. S., 517, where it is said that goods are in interstate, and necessarily as well in foreign, commerce when they have "actually started in the course of transportation to another state, or delivered to a carrier for transportation." In *G., C. & S. F. Ry. Co. v. State of Texas*, 204 U. S., 403, the facts are different and the case is not apposite.

Defendant and intervener invoke the application of the Supreme Court's decision in *G., C. & S. F. Ry. Co. v. Texas*, 204 U. S., 403, but it is noted that in deciding the *Young case*, *supra*, the Supreme Court took pains to say that in *G., C. & S. F. Ry. Co. v. Texas* "the facts are different and the case is not apposite."

The first section of the act provides that its terms shall apply—

• • • to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States or the District of Columbia, to any other state or territory, or the District of Columbia.

• • • and also to the transportation in like manner of property shipped from any place in the United States to a foreign country, and carried from such place to a port of transshipment, or shipped from a foreign country

any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.

* * * *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one state and not transmitted to or from a foreign country from or to any state or territory as aforesaid.

The question of jurisdiction hinges upon the proper interpretation of the words: "Shipped from a foreign country to any place in the United States and carried to such place from a port of entry in the United States." It is argued that the manner in which the traffic here considered is handled removes it from the application of those words.

It is well settled that in many of these matters the state may act if the Congress has not seen fit to exercise the federal power, but we think that the Congress has seen fit to exercise the federal power with relation to the transportation of property "shipped from a foreign country to any place in the United States, and carried to such place from a port of entry."

It is argued that the words "in like manner" refer to transportation "partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment." With this contention we can not agree, especially in view of the decision of the Supreme Court in the *Young case, supra*.

Neither can we concur in the view that the words "as aforesaid" exclude the federal jurisdiction over traffic transported in the manner here shown.

In the instant case the traffic is unloaded from the steamship upon the public docks, owned by the city of New Orleans, and is there loaded by defendant into its cars, and the cars are then switched by a belt-line road to defendant's line. It is argued, therefore, that this case is to be differentiated from the *Young case, supra*. The entire transportation is conducted through these several agencies, which are employed for the purpose of carrying out the original intention of shipping the sugar from the foreign port to Gramercy. The shipments are, as has been seen, destined to Gramercy when loaded on the steamship, and we think that they must be considered as having been delivered to the ocean carrier for transportation to Gramercy.

It is argued that the neglect or failure of a carrier to file a tariff with a rate-regulating body does not dispossess that body of its authority or jurisdiction over the traffic intended to be covered by the tariff, and that the act of filing a tariff with a rate-regulating body does not transfer to that body jurisdiction which by law is

lodged in some other regulating body with which the tariff has not been filed. This suggestion of itself is, no doubt, correct, but it does not at all follow that a carrier may file conflicting tariffs with state and federal bodies and use one as a shield against the other.

The act to regulate commerce requires carriers to publish, file, and post schedules of their charges upon traffic subject to the act; it forbids carriers from participating in such traffic until such tariffs have been so filed and except in strict accord with their provisions; it binds both carrier and shipper to the terms of such tariffs, which, when they have been filed, become the law and the only lawful authority as to the movement of such traffic. If a carrier that is subject to the federal act files a tariff applicable on traffic that is subject to the act, it must be held to be bound thereby.

As has been seen, this defendant files with us its "local import tariff" naming rate on sugar "imported from foreign countries and from United States insular possessions received through New Orleans, La., or Port Chalmette, La."; it takes the sugar with its own employees from the wharf where it is laid down by the steamship company and transports it to Gramercy, the destination it was originally intended to reach; the agent of the owner of the sugar attends to the payment of import duties; he receives from the United States customs officer an order for the steamer to deliver the sugar to him, and he simply turns that order over to defendant.

We are of opinion that this traffic is subject to the provisions of the act to regulate commerce; that it is not only proper but necessary that defendant should file with us tariff under which it transports this property, and that it may lawfully be transported only in accordance with the terms and conditions of a tariff so filed with us.

Complainants introduced an experienced traffic officer of a railroad which competes with defendant, who testified that from his experience, and in his judgment, the rate named in this tariff would not cover the actual cost of the service rendered. Defendant's officer testified that the actual cost of loading from wharves to cars for the past year was a trifle less than seven-tenths of 1 cent per 100 pounds; that the average loading per car was 65,200 pounds, and that the switching charge absorbed was \$2 per car, which left \$3.29 per car for the haul from its terminal in New Orleans to Gramercy, the distance being 38 miles. He also testified that for the year ended June 30, 1911, defendant's cost of operation for the whole system was \$1.84 per freight-train mile, which included the cost of the river transfer from Angola to Naples; that the average number of cars per freight-train mile for the system was 19, and that the average number of cars per freight train between New Orleans and Gramercy was greater than the average of the whole system.

It is also stated that defendant receives more revenue from a car-load of refined sugar from Gramercy to an interstate destination than it would receive from New Orleans to the same destination, and that the maintenance of the refinery at Gramercy has materially increased the other traffic of the road and given it new sources of revenue. It is testified that defendant and the Gramercy plant have encouraged and largely stimulated the growth of sugar-cane along defendant's line, and that if the Colonial Sugars Company were not able to secure the transportation of the raw sugar by rail at this low rate it could construct a wharf at Gramercy and have the sugar brought there by vessel.

The Yazoo & Mississippi Valley Railroad also hauls sugar cane to the Gramercy plant, and the understanding and purpose is that each railroad shall receive the outbound tonnage of sugar from the cane which it hauls in.

It is testified that the normal movement of empty cars on defendant's line is north from New Orleans and that but for the loading of this sugar to Gramercy the same cars would ordinarily be hauled empty.

The rates on refined sugar from New Orleans and from Gramercy to northern points are the same, and defendant argues that the existing arrangement is in effect equal to a transit privilege under which the raw sugar would be taken from New Orleans, refined at Gramercy, and transported to destination.

The American Sugar Refining Company has a large and modern refining plant at Port Chalmette at which sugar is handled from the boats to the refinery by machinery. That company contends that under this arrangement the cost to the Colonial Sugars Company of getting the raw sugar into its refinery at Gramercy is less than that to the American Sugar Refining Company at Port Chalmette. It is obvious, however, that, if such differences did exist, the elimination of certain of the provisions for absorptions which were contained in the tariff in effect when this inquiry was instituted has very materially modified, if it has not entirely removed them. We are not able to find that the present tariff effects undue discrimination, especially in view of the fact that the American Sugar Refining Company's plant is not located upon and ships no sugar over defendant's line. On the record we must conclude that defendant is not transporting this sugar to Gramercy at less than the cost to it of the service.

22 L. C. C.

No. 4301.
REPUBLIC METALWARE COMPANY
v.
ERIE RAILROAD COMPANY ET AL.

Submitted December 6, 1911. Decided March 4, 1912.

Charges collected by defendants for transportation of 15 carloads of stamped ware from Buffalo, N. Y., to Pacific coast terminals, found to have been unreasonable. Reparation awarded.

Thomas E. Lawrence and Charles J. Staples for complainant.

F. C. Dillard and H. A. Scandrett for Union Pacific Railroad Company and Southern Pacific Company.

T. H. Burgess for Erie Railroad Company, Chicago & Erie Railroad Company, Denver & Rio Grande Railroad Company, and Western Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of stamped ware and tinware, with its principal place of business at Buffalo, N. Y. By petition, filed August 9, 1911, it assails as unjust, unreasonable, and discriminatory the charges collected by defendants for the transportation of 15 carloads of stamped ware from Buffalo to California and north Pacific coast terminals. The subject matter of the complaint was first filed with the Commission on January 23, 1911. Reparation is asked.

During the period from March 29, 1909, to September 17, 1910, complainant shipped over defendants' lines, via the routes hereinafter stated, from Buffalo, to Oakland and San Francisco, Cal., Portland, Oreg., and Seattle, Wash., 15 carloads of stamped ware, for which transportation charges were collected at a rate of \$1.20 per 100 pounds, except as to certain portions of each shipment packed in corrugated strawboard boxes, which were charged at a rate 50 per cent higher, or \$1.80 per 100 pounds.

Transcontinental freight bureau tariffs in force at the time these shipments moved named the following commodity rates, in cents

per 100 pounds, from Buffalo to California and north Pacific coast terminals:

	L. C. L.	C. L.
Stamped ware: Agate or enameled, n. o. s., also granite ironware, n. o. s., in boxes, barrels, or crates, minimum carload weight, 22,000 pounds.....	\$1.70	\$1.30
Stamped ware, n. o. s., nested (not agate, granite, or enameled ware), in boxes, barrels, or crates, minimum carload weight, 22,000 pounds.....	1.70	1.30

These rates were subject to a rule of the tariff, the material provisions of which read as follows:

ARTICLES IN BOXES, CRATES, OR BALES.

18. (A) When commodity rates * * * provide for articles "boxed," and do not provide for the same in crates, racks, bales, bags, or bundles, they will take, when shipped in crates or racks, 25 per cent higher rate than in boxes, and when shipped in bales, bags, or bundles, 50 per cent higher rate than in boxes (when same rate is provided for articles in crates as in boxes, when shipped in bales, bags, or bundles they will take 50 per cent higher rates).

(B) The term "boxed" used in this tariff is intended to mean packages made entirely of lumber or lumber and metal, completely inclosing the contents.

(C) The term "crated" or "in crates" means inclosed on all sides (including bottom) with framework, so as to allow of the package being taken in and out of a car within the crate, and so as to fully protect the article from damage by contact with other freight. Packages consisting of binder's board, loose wooden boards, wood fiber, or similar material, inclosed in wooden frames, or consisting of basketwork (woven wood and wire), will be considered "crates."

Under their construction of this rule the defendants charged on all the articles packed in corrugated strawboard boxes 50 per cent higher than the commodity rate named. The complainant contends that the rate thus applied was excessive.

Upon the record we are met first with the question of whether or not the rule was correctly interpreted and applied by the defendants. The first clause authorizes 25 per cent higher rates when the commodity rates provide for articles "boxed," and *do not provide for the same in crates, racks, etc.* But the commodity rate on stamped ware is expressly made applicable to shipments in *crates* as well as in *boxes*. By its own terms, therefore, the first clause is excluded from consideration, and we pass to a definition of the terms "boxed" and "crated." By section (B) of the rule the term "boxed," as used in the tariff, is said to be "intended to mean packages made entirely of lumber or lumber and metal, completely inclosing the contents." Although the terms of this section are inclusive rather than exclusive, it can not be held applicable to corrugated strawboard boxes. As the shipments in question were not crated, the first sentence of section C is not applicable. Nor can the remaining sentence be made to apply, since the packages did not consist of the material specified or of similar material and were not "inclosed in wooden frames."

We are thus confronted with this situation: The tariffs provide in express terms a rate of \$1.20 on stamped ware in *boxes*, barrels, or *crates*. The packages here involved were neither boxes, barrels, nor crates. The rule further declares that the rate shall be 50 per cent higher if the articles are shipped in *bales*, *bags*, or *bundles*; the defendants applied the 50-per-cent-higher basis to the shipments. Did they therefore consider that the corrugated strawboard boxes were *bales* or *bags* or *bundles*? If not, upon what theory was the commodity rate applied?

If the terms embraced in the rule are to be accepted as they read, their effect would be to so restrict the application of the tariff as to provide no commodity rate at all for articles shipped in boxes of the character here in question. Such, however, has not been the view of the transcontinental carriers; that a commodity rate was in fact authorized by the tariffs does not appear to have been questioned by the delivering carriers, for they construed the rule as justifying a charge of 50 per cent above the commodity rate. They have heretofore interpreted the tariff as authorizing a commodity rate on such shipments notwithstanding the inapplicability of the rule. But as the rule reads, and we have no reason to construe it otherwise, it did not permit the imposition of the 50-per-cent-higher charge. At the same time, however, its failure to define "boxed" to include packages made of corrugated strawboard, rendered equally inapplicable the commodity rate of \$1.20. It appears therefore that at the time of movement the defendants published no rate that could under their commodity tariffs be applied on such of complainant's shipments as are here involved.

Notwithstanding this dereliction of defendants, the complainant is entitled to a just and reasonable rate. In the determination of this question we find that contemporaneously with the series of transcontinental tariffs applicable when these shipments moved, the western and the official classifications provided, in substance, that freight shipped in pulp, fiber, or double-faced corrugated waterproofed board packages would, on condition that they met certain specified requirements as to construction, thickness, etc., take the rating provided for the same articles when in wooden boxes. In the transcontinental tariffs, I. C. C. Nos. 928 and 929, effective October 10, 1910, within one month following the last shipment, and having the same applications as the ones we have been considering, the rule referred to was modified by the insertion in section (B) of a provision to the effect that "unless otherwise provided, ratings on articles in wooden boxes will apply on the same articles in fiberboard, pulpboard, or double-faced corrugated strawboard boxes," provided certain specifications and requirements as to material, power of resistance, test of durability, etc., are complied with. The modified rule

is still in force, and it is not questioned that under these later tariffs shipments of the character here in question would be entitled to the rate of \$1.20.

Considering the character of the commodity and of the box in which it was shipped, we do not think that the just and reasonable rate to apply on the shipments should have exceeded the rate of \$1.20 per 100 pounds applicable to the same commodity inclosed in a box of different composition. From all the facts before us, we are of the opinion and so find that the 50-per-cent-higher charge collected by defendants constituted an unreasonable and unlawful charge and should be refunded to complainant.

The shipments all originated at Buffalo. The points to which they were destined, the dates of shipment and the respective routes of movement, weights of portions packed in corrugated strawboard boxes, and amount of the unreasonable charges thereon, were as follows:

Three to Oakland, Cal., in March, July, and August, 1909, via the Erie Railroad; Chicago & Erie Railroad; Atchison, Topeka & Santa Fe Railway; and Southern Pacific Company; combined weight, 13,327 pounds; reparation due complainant, \$79.96.

Two to Oakland, Cal., in October and November, 1909, via the Erie Railroad; Chicago & Erie Railroad; Chicago Great Western Railroad; St. Joseph & Grand Island Railway; Union Pacific Railroad; and Southern Pacific Company; combined weight, 16,120 pounds; reparation due complainant, \$96.72.

Two to Oakland, Cal., in February and July, 1910, via the Erie Railroad; Chicago & Erie Railroad; Wabash Railroad; Missouri Pacific Railway; Denver & Rio Grande Railroad; and Western Pacific Railway; combined weight, 17,478 pounds; reparation due complainant, \$104.87.

One to San Francisco, Cal., in August, 1910, via the Erie Railroad; Chicago & Erie Railroad; Wabash Railroad; Missouri Pacific Railway; Denver & Rio Grande Railroad; and Western Pacific Railway; weight, 12,797 pounds; reparation due complainant, \$76.78.

One to Seattle, Wash., in October, 1909, via the Erie Railroad; Chicago & Erie Railroad; Chicago Great Western Railroad; and Great Northern Railway; weight, 1,500 pounds. By mistake the less-than-carload rate of \$1.70 was charged in this instance, which, with the 50-per-cent penalty added, made a rate of \$2.55. The entire shipment was slightly less than the minimum carload weight, but the full minimum weight was charged at the regular carload rate, and the 1,500 pounds at the less-than-carload rate; so that the reparation due complainant as to this shipment is \$38.25.

One to Seattle, Wash., in November, 1909, via the Erie Railroad; Chicago & Erie Railroad; Chicago, Burlington & Quincy Railroad;

and Great Northern Railway; weight, 12,325 pounds; reparation due complainant, \$73.95.

One to Seattle, Wash., in January, 1910, via the Erie Railroad; Chicago & Erie Railroad; Chicago, Milwaukee & St. Paul Railway; and Chicago, Milwaukee & Puget Sound Railway; weight, 3,316 pounds; reparation due complainant, \$19.90.

One to Seattle, Wash., in August, 1910, via the Erie Railroad; Chicago & Erie Railroad; Minneapolis, St. Paul & Sault Ste. Marie Railway; and Northern Pacific Railway; weight, 9,925 pounds; reparation due complainant, \$59.55.

One to Seattle, Wash., in September, 1910, via the Erie Railroad; Chicago & Erie Railroad; Chicago, Burlington & Quincy Railroad; and Great Northern Railway; weight, 4,060 pounds; reparation due complainant, \$24.36.

Two to Portland, Oreg., in May and September, 1910, via the Erie Railroad; Chicago & Erie Railroad; Minneapolis, St. Paul & Sault Ste. Marie Railway; Great Northern Railway; and Spokane, Portland & Seattle Railway; combined weight, 6,435 pounds; reparation due complainant, \$38.61.

Upon the record the Commission finds that the complainant made the several shipments and paid unreasonable charges as set forth in the above statement of facts; that it has been damaged in the aggregate of the several specific amounts above stated as reparation; that it is therefore entitled to an award of reparation in the specific sums stated, with interest, against the carriers shown by the said statement of facts to have participated in the transportation for which the unreasonable rates were exacted. An order will be entered accordingly.

22 I. C. C. Rep.

No. 3496.

SIDWAY MERCANTILE COMPANY

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL

Submitted February 24, 1911. Decided March 4, 1912.

Charges collected by defendants for transportation of two carloads of children's collapsible gocarts from Elkhart, Ind., one to Los Angeles, and the other to Oakland, Cal., found to have been unreasonable. Reparation awarded.

J. F. Ehninger for the complainant.

H. A. Scandrett for Union Pacific Railroad Company and Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of children's gocarts, with its principal office at Elkhart, Ind. Its petition, filed August 29, 1910, alleges that it was charged an excessive and unreasonable rate for the transportation of two carloads of children's collapsible gocarts from Elkhart, one to Los Angeles, Cal., and the other to Oakland, Cal. Reparation is asked.

December 29, 1909, complainant shipped via defendants' lines, from Elkhart to Los Angeles, one carload of children's folding or collapsible gocarts for which transportation charges were collected in the sum of \$525, at a rate of \$2.62½ per 100 pounds, upon a minimum of 20,000 pounds. January 2, 1910, complainant shipped via defendants' lines from the same point of origin to Oakland, one carload of like goods, weighing 23,000 pounds, for which transportation charges amounting to \$603.75 were collected at the same rate. The gocarts were shipped folded flat, packed in pulpboard boxes.

Transcontinental freight bureau tariff, I. C. C. No. 904, in force via defendants' lines when the shipments moved, named a rate of \$1.75 per 100 pounds from Elkhart to Los Angeles and Oakland on "gocarts (folding or collapsible), wood or metal, boxed or crated,

min. c. l. wt. 20,000 lbs." The tariff carried a rule, to which the shipments were subject, reading as follows:

(A) When commodity rates * * * provide for articles "boxed," and do not provide for the same in crates, racks, bales, bags, or bundles, they will take, when shipped in crates or racks, 25 per cent higher rate than in boxes, and when shipped in bales, bags, or bundles, 50 per cent higher rate than in boxes (when same rate is provided for articles in crates as in boxes; when shipped in bales, bags, or bundles they will take 50 per cent higher rates).

(B) The term "boxed," used in this tariff, is intended to mean packages made entirely of lumber or lumber and metal, completely inclosing the contents.

(C) The term "crated" or "in crates" means inclosed on all sides, including bottom, with framework, so as to allow of the package being taken in and out of a car within the crate, and so as to fully protect the article from damage by contact with other freight. Packages consisting of binders' board, loose wooden boards, wood fiber, or similar material, inclosed in wooden frames, or consisting of basketwork (woven wood and wire), will be considered "crates."

Under the assumption that this rule gave authority for its action, the delivering carrier added 50 per cent to the rate as to each shipment, and assessed the charges accordingly.

The shipments were sold by complainant under a guaranteed freight rate of \$1.75 per 100 pounds. The additional charges were paid at destination by complainant's western representative, and under the contract of purchase were charged back to and ultimately paid by complainant. They amounted to \$175 on the shipment to Los Angeles and \$201.25 on the Oakland shipment. In the superseding transcontinental tariff, effective October 10, 1910, a provision was incorporated, which is still in force, to the effect that unless otherwise stated ratings on articles in wooden boxes will apply on the same articles in fiberboard, pulpboard, or double-faced corrugated strawboard boxes. It is not questioned that if the later tariff had been in force when the shipments moved the rate of \$1.75 would have applied.

Complainant contends that the charges were excessive and unreasonable to the extent of the 50 per cent added to the commodity rate, and reparation is desired accordingly.

A matter of first importance is whether the 50-per-cent-higher rate was authorized by the rule referred to. A like question, involving the same rule, was considered and decided in *Republic Metalware Co. v. E. R. R. Co.*, 22 I. C. C. Rep., 565. In that case there were a number of transcontinental shipments of articles in boxes similar to those here in question, and under the rule, as construed by the carriers, 50 per cent was added to the published rate, as in this case. We there held that the rule furnished no authority for the additional charge, and that the imposition of said additional charge was unreasonable. The ruling in that case is applicable and controlling here. In view thereof and of the facts of this case we are of opinion and

find that the 50-per-cent-higher rate collected by defendants was unreasonable and should be refunded to complainant.

Upon the record we find that the complainant made the shipments as set forth in the above statement of facts; that it paid on said shipments unreasonable charges amounting to \$175 on the shipment from Elkhart to Los Angeles and in the sum of \$201.25 on the shipment to Oakland; that it was damaged to the extent that the charges upon said shipments were unreasonable; that by reason of having paid said unreasonable amounts it is entitled to an award of reparation against the defendants herein in the total sum of \$376.25, with interest thereon from February 18, 1910.

An order will be entered accordingly.

22 I. C. C. Rep.

No. 4121.
BRIDGEMAN-RUSSELL COMPANY
v.
GREAT NORTHERN EXPRESS COMPANY ET AL.

Submitted September 30, 1911. Decided March 4, 1912.

On May 1, 1911, the defendant express company increased its rates for the interstate transportation of milk from points in Minnesota to Duluth, Minn., to equal the scale of rates on cream for similar distances prescribed by the Commission in *Cobb v. N. P. Ry. Co.*, 20 I. C. C. Rep., 100; *Held*. That defendants have failed to justify any advance and that the milk rates in force prior to May 1, 1911, should be restored.

Francis W. Sullivan for complainant.

G. Roy Hall for Commercial Club of Duluth.

J. D. Armstrong for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the purchase and sale of milk and other dairy products at Duluth, Minn. In its petition, filed May 23, 1911, it alleges that unreasonable and discriminatory express rates are charged by defendants for the transportation of milk from points in Minnesota, on the line of the Great Northern Railway, to Duluth. These shipments pass through Wisconsin, and are therefore interstate. Reparation is asked as to shipments made since May 1, 1911.

The Great Northern Railway Company is made a party defendant, but it has no direct interest in the rates or the prayer for reparation. The rates complained of are those of the Great Northern Express Company. The railway company does not now handle any milk for complainant and has not done so for a number of years. Therefore when the defendant is mentioned in this report it will be understood as referring to the express company. For convenience Minneapolis and St. Paul, Minn., will be called the Twin Cities when both are referred to.

The line of the Great Northern Railway between Duluth and the Twin Cities, over which defendant operates, runs from Duluth to Brook Park, Minn., where it divides into two branches, one running southerly to Coon Creek, Minn., the other more westerly to St. Cloud, Minn. The two last-named points are joined by another branch of the Great Northern Railway, thus completing a triangle. Across this triangle another branch line extends from Milaca on the Brook Park-

St. Cloud side. The rates to Duluth from all points on this triangle and its contained branch, as well as from all points between Brook Park and Duluth are brought in issue by the petition.

The distance between St. Cloud and Duluth is 140 miles; between Coon Creek and Duluth it is 137 miles. Complainant, however, does not purchase milk at a greater distance from Duluth than 120 miles. The rates charged by defendant for the transportation of both milk and cream over these lines are set forth in a distance schedule which fixes the rate at intervals of five miles. These rates are the same as those prescribed for cream in *Beatrice Creamery Co. v. I. C. R. R. Co.*, 15 I. C. C. Rep., 109, and will be referred to hereafter as the Beatrice scale.

The complainant avers that these rates, charged for the transportation of milk from the points under consideration to Duluth, when compared with the rates to the Twin Cities from the same points of origin, or from stations on the parallel line of the Northern Pacific Railway, result in undue and unreasonable prejudice as against Duluth. It is sufficient to say that the allegation of discrimination is not sustained by the evidence.

The allegation that the milk rates are unreasonable is based upon the fact that defendant charges the same rates for the transportation of milk to Duluth from the points under consideration as it charges for the transportation of cream between the same points; and that said rates have been increased since January 1, 1910.

For a number of years prior to April, 1907, the defendant had charged the same rates for the transportation of milk as for that of cream. The Railroad & Warehouse Commission of Minnesota, after an investigation, issued an order April 11, 1907, establishing new and separate schedules of rates for the transportation of milk and of cream. These schedules will be referred to in this report as the Minnesota scale. The Minnesota scale of milk rates was approximately 75 per cent of the cream rates for similar distances. The milk rates so prescribed were applied by the carriers on all shipments of milk from Minnesota points to Duluth, whether moving intrastate through West Duluth or interstate through Superior.

Later, the reasonableness of the cream rates was brought in issue before this Commission and in *Cobb v. N. P. Ry. Co.*, 20 I. C. C. Rep., 100, an order was issued fixing the rates for the transportation of cream in accordance with the rates previously adopted in *Beatrice Creamery Co. v. I. C. R. R. Co.*, *supra*. The defendant published a tariff putting these rates in effect for the transportation of cream on April 1, 1911, and naming the same rates for the transportation of milk, effective May 1, 1911. Complainant now asks that the scale of rates for the transportation of milk established by the order of the Minnesota Railroad & Warehouse Commission in 1907 be restored by the order of this Commission.

While the rates for the transportation of cream were changed in compliance with the order in *Cobb v. N. P. Ry. Co.*, *supra*, that case did not involve milk rates, and the increase in these latter rates was made by defendant on its own motion. This increase having been made subsequently to January 1, 1910, the burden of proof to show that the increased rates are just and reasonable rests upon the carrier.

In support of this advance in the rates for the transportation of milk defendant alleges that it has always been the custom in this territory, until the adjustment was disturbed in 1907, to charge the same rates on milk as on cream; that the tariff which increased the milk rates also reduced the cream rates; that there is no good transportation reason why the rates on milk and cream should not be the same; that the two commodities are transported in the same manner, move in the same cars, occupy similar space, claims for loss and damage on both are nominal, empty cans are in each case returned to the shipper, and the operating cost for carriage in each case is the same. The greater cost of cream than of milk, and the greater volume of the movement of cream than of milk in this territory are said to be the only elements in which they differ.

The order of the Minnesota Railroad & Warehouse Commission establishing the Minnesota scale was published without any statement of the reasons for fixing lower rates on milk than on cream. In 1908, however, the Wisconsin railroad commission, in *Shultis v. C., M. & St. P. Ry. Co.*, 2 Wis. R. R. Com. Rep., 450, prescribed rates on milk and cream and maintained practically the same relation between the rates on the two commodities that obtained under the Minnesota scale. In the report which accompanied the order in this case, the reasons for establishing this relation are set forth at some length. These reasons may be briefly stated as follows:

The rates as originally promulgated were terminal rates to the milk-consuming centers, and were not supposed to cover shipments of cream, which constituted but a small amount of the general movement. Now and then small quantities of cream may have been shipped, but the shipments were so few in number that it was not regarded as worth while to make up separate tariffs for them. During the last few years (prior to 1908) the character of these shipments changed materially. Milk constitutes but a small part, while the great majority of the tonnage is cream, or condensed milk. Of late there has grown up the so-called centralized system of manufacturing butter, the cream being shipped from a large number of receiving stations scattered over an extensive territory, and manufactured at a central churning plant. This system has reached its greatest development in the west. By this change a commodity of much greater value than milk, the original basis of the rates, was being handled at the milk rates. The fact that the rates for milk and cream have remained the same appears to be due to the manner

in which the demand for the latter commodity has developed, rather than to the fact that it was thought that these two commodities were so much alike that it was only fair that they should be in the same class and charged the same rates. It would appear that cream, testing 30 to 35, or perhaps 40, per cent butter fat is from 6 to about 10 times as valuable as unskimmed milk. Under the rules which ordinarily obtain in classifying freight, by which articles of high value, other things being equal, should be charged higher rates for transportation than articles of low value, milk would clearly be placed in a class that takes lower rates than that in which cream is placed. Upon the facts presented, milk should be rated one class lower than butter, while cream and butter should take the same class.

Complainant laid some stress upon the report of the Commission in *Milk Producers Protective Assn. v. D., L. & W. R. R. Co.*, 7 I. C. C. Rep., 92. In that case the Commission prescribed rates for the transportation of cream materially higher than those for the transportation of milk; but the relation between the two rates was not an important issue in the case, and the Commission continued in effect a relationship that had been maintained for more than 20 years.

The various scales of rates on milk and cream in this territory are based upon zones of 5 miles. The distances involved range from 25 to 130 miles. The following table shows the rates in force to Duluth, on milk and cream, since 1907:

Rates in force since 1907.

Distance.	Prior to Apr. 29, 1907 - Milk and cream, per 10-gallon can.	Apr. 29, 1907, to May 1, 1911 - Milk, per 10-gallon can.	Apr. 29, 1907, to Apr. 1, 1911 - Cream, per 10-gallon can.	Since May 1, 1911 - Milk and cream, per 10-gallon can.
<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents.</i>	<i>Cents.</i>
10	19	14	19	20
25	20	14	19	20
30	21	14	19	21
35	21	16	21	22
40	21	16	21	23
45	21	16	21	24
50	21	19	24	25
60	22	19	24	26
65	23	20	26	27
70	24	20	26	27
75	25	20	26	28
80	26	21	26	28
85	27	21	26	29
90	28	21	26	29
95	29	23	31	30
100	30	23	31	30
105	31	23	31	31
110	32	27	36	31
115	33	27	36	31
120	34	27	36	32
125	36	30	40	32
130	36	30	40	32

Upon the facts of record we are of opinion that defendant has not sustained the burden of proof to show that the increased rates on milk are reasonable. We are also of opinion that milk should ordinarily take a lower rate than cream. The rates established by the railroad commissions of Wisconsin and Minnesota, which fixed lower rates on milk than on cream, were, so far as we are informed, acquiesced in by the carriers, and were voluntarily extended to cover interstate transportation. The fact that in the *Cobb case* this Commission established reasonable rates for the interstate transportation of cream affords no excuse for increasing rates which were reasonable for the transportation of milk. We find that defendant's present rates for the transportation of milk to Duluth from distances not exceeding 130 miles are unreasonable to the extent that they exceed the rates which were in force prior to May 1, 1911. An order will be entered requiring defendant to cease and desist from charging its present rates and to establish in lieu thereof rates not in excess of those herein found to be reasonable.

We further find that complainant has made shipments and paid charges thereon at the rates herein found to be unreasonable; and that it has been damaged to the extent of the difference between the amounts which it did pay and the amounts which it would have paid had the rates herein found reasonable been applied. Complainant may submit a statement showing the shipments made under the increased rates and the amount of reparation due under our conclusion herein. On receipt and verification of such statement a proper award of reparation will be entered.

No. 3254.

PAUL STIRITZ

v.

NEW ORLEANS, MOBILE & CHICAGO RAILROAD COM
PANY ET AL.

Submitted February 20, 1911. Decided March 4, 1912.

Rate of 14 cents per 100 pounds on crossties from points between Houston, Miss., and Louisville, Miss., to Cairo, Ill., for beyond, not found to be unreasonable or unduly prejudicial.

C. Lee Crum for complainant.

R. Walton Moore for New Orleans, Mobile & Chicago Railroad Company and Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Houlka, Miss., engaged in the manufacture and sale of crossties. By petition, filed April 28, 1910, he alleges that defendants' rate of 14 cents per 100 pounds for the transportation of crossties from points on the New Orleans, Mobile & Chicago Railroad between Houston, Miss., and Louisville, Miss., to Cairo, Ill., for points beyond, is unreasonable and discriminatory, in that said rate exceeds the rate of 12½ cents to Cairo on like traffic from points on the same road north of Houston. It is prayed that a rate of 10 cents to Cairo be established from points between Houston and Louisville. Reparation is asked on such shipments as moved under the 14-cent rate. At the hearing complainant abandoned his contention for a 10-cent rate, and stated that he did not claim a rate less than 12½ cents.

The line of the New Orleans, Mobile & Chicago Railroad, formerly the Mobile, Jackson & Kansas City Railroad, extends from Mobile, Ala., through Mississippi to Middleton, Tenn., and from Beaumont, Miss., to Hattiesburg, Miss. About 80 per cent of the traffic on this line consists of forest products—lumber, crossties, staves, etc. Prior to about two years ago the rates on crossties originating on this line were higher than the rates on lumber of the same kind of wood from

which said crossties were manufactured. At that time, in conformity with an opinion of the Commission, rates on crossties were reduced to equal the rates contemporaneously in effect on lumber.

As showing that the rates on crossties are not unreasonable, the New Orleans, Mobile & Chicago sets forth the history of lumber rates on its line. From its inception the company began to haul lumber upon a rate to Cairo of 16 cents from points between Mobile and Merrill, Miss., which was then its terminal. As the line was extended the rate of 16 cents was also extended until it applied from all points on the line. Subsequently the territory was divided into two groups, one embracing stations south of Houston to Mobile and the other north of Houston to New Albany, Miss. The present rate on lumber to Cairo, via Houston, from the points between Mobile and Houston, a distance of 282 miles, is 14 cents, while from points north of Houston to New Albany, a distance of 43 miles, the rate is 12½ cents. Louisville is between Mobile and Houston, 62 miles south of the latter point. These rates also apply to Cairo via Ackerman, Miss., and the Illinois Central and via New Albany and the St. Louis & San Francisco.

In support of his claim complainant relies mainly upon the fact that the rate to Cairo from stations between Houston and New Albany is 12½ cents, and alleges that in an informal proceeding before the Commission defendants admitted that this rate was reasonable. The New Orleans, Mobile & Chicago admits that in such a proceeding, where the Houlka Tie Company sought reparation, it agreed that a rate of 14 cents to Cairo on crossties from points between Houston and New Albany was unreasonable to the extent that it exceeded 12½ cents. It contends, however, that this admission was merely a formal one made for the purpose of adjusting said claim and that it did not relate to the shipping points here in question. It states that the publication of the 12½-cent rate to Cairo from points between New Albany and Houston was due to the following conditions over which it had no control. To meet the rate put in effect by the St. Louis & San Francisco to Thebes, Ill., which was also applicable to Cairo, defendant had established a rate of 10 cents from New Albany to Cairo. The Mississippi Railroad Commission had established rates of 2½ cents for a distance of 20 miles and 2¾ cents for a distance of 40 miles. The distance between New Albany and Houston is about 43 miles, and it was therefore possible for lumber dealers in this territory to forward traffic locally to New Albany and then reship on the 10-cent rate to Cairo, making in the aggregate a rate of 12½ to 12¾ cents. The New Orleans, Mobile & Chicago therefore made the rate from these points 12½ cents in order that it might obtain its division of the through rate, which was greater, from these stations, than the Mississippi mileage rates. It is asserted that this condition does

not exist south of Houston, for the reason that the local mileage rates increase as the distance south of New Albany increases, so that from points south of Houston the combination of rates up to New Albany and the 10-cent rate from that point equal or are greater than the 14-cent rate.

It is further contended by the New Orleans, Mobile & Chicago that the existing rates have been influenced and controlled by competitive conditions and compare favorably with rates via other lines. The Illinois Central, Mobile & Ohio, and Southern Railway in Mississippi all penetrate the territory served by the New Orleans, Mobile & Chicago and engage in the movement of forest products. The Okolona branch of the Mobile & Ohio crosses the line of the New Orleans, Mobile & Chicago at Houston and to some extent competes for the business of stations both north and south of Houston. The rate from points on this line to Cairo proper is 14 cents and for beyond 12 cents. It was shown that the rate on the main line of the Mobile & Ohio from a point near Louisville to Cairo is 12 cents, but it was testified that this was a mere paper rate, as little traffic originates there. The Aberdeen branch of the Illinois Central extends from Aberdeen to Durant, Miss., and crosses the New Orleans, Mobile & Chicago Railroad at Ackerman, a point just north of Louisville, and the rate to Cairo is 13 cents. The Southern Railway crosses the New Orleans, Mobile & Chicago at Newton, Miss., and has in effect rates from this territory to Cairo of 13 cents. While these rates are somewhat lower than the rates from the points in question on the New Orleans, Mobile & Chicago, the zones from which they apply are more extensive and include stations which correspond, as to distance, with defendants' 12½-cent zone. It appears that the New Orleans, Mobile & Chicago is a new line, as yet poorly equipped, and lacks the density and variety of traffic enjoyed by these older lines.

No evidence was adduced by complainant as to the unreasonableness of the rate from the territory between Houston and Louisville other than its comparison with the rate from the territory north of Houston to New Albany, and a reference to the proportions received by the New Orleans, Mobile & Chicago Railroad and the Mobile & Ohio in the division of the joint rate to Cairo from points between Houston and Louisville. Complainant cites the fact that in the division of the joint rates the Mobile & Ohio Railroad receives only 5 cents for a haul of 250 miles, while the New Orleans, Mobile & Chicago receives 9 cents for a haul ranging from 8 to 25 miles, and endeavors to compare the proportion received by the latter-named road with local mileage rates established by the Mississippi Railroad Commission. As a matter of fact, the proportion received by the New Orleans, Mobile & Chicago is the same on this traffic from all points on its line between Houston and Mobile, a distance of 282

miles. However, this Commission has repeatedly held that the proportions received by carriers in the division of joint rates ordinarily affords little basis upon which to determine the reasonableness of the joint rates. While complainant attacks only the rate of 14 cents from stations between Houston and Louisville, it should be borne in mind that this is a group rate extending from Houston to Mobile.

The Commission has repeatedly recognized and approved the grouping of points, within reasonable limits, for the purpose of making rates, and it will not disturb such groupings in the absence of proof that as to particular points in a zone the adjustment results in unreasonable rates or undue prejudice and disadvantage. Upon the facts of record we are unable to find that the rate charged is unreasonable or unduly prejudicial. The complaint must be dismissed, and it will be so ordered.

No. 4108.
C. M. McCLUNG & COMPANY
v.
SOUTHERN RAILWAY COMPANY.

Submitted November 16, 1911. Decided March 4, 1912.

Rate of 37 cents per 100 pounds for the transportation of ~~less-than-carload~~ shipments of boat spikes, shipped with carlots of railroad spikes from Richmond, Va., to Knoxville, Tenn., not found to have been unduly prejudicial. Complaint dismissed.

S. J. Bolton for complainant.

Claudian B. Northrop, by *Alex. M. Bull*, for defendant.

REPORT OF THE COMMISSION.

By THE COMMISSION:

Complainant is a corporation engaged in the buying and selling of hardware, with principal place of business at Knoxville, Tenn. By petition, filed May 20, 1911, it alleges that it has been charged an unreasonable and unduly discriminatory rate for the transportation of certain less-than-carload shipments of boat spikes from Richmond, Va., to Knoxville, Tenn. Reparation is asked.

Complainant received at its place of business in Knoxville, on the dates specified, the following shipments: September 24, 1909, one car containing 38,480 pounds of railroad spikes and 6,240 pounds of boat spikes; March 15, 1910, one car containing 37,440 pounds of railroad spikes and 4,160 pounds of boat spikes; April 11, 1910, one car containing 37,440 pounds of railroad spikes and 2,080 pounds of boat spikes. In each instance transportation charges were collected at a rate of \$4.50 per gross ton, subject to a minimum weight of 15 gross tons for the railroad spikes and 37 cents per 100 pounds for the boat spikes, except that on the shipment received September 24, 1909, the boat spikes were charged for at the commodity rate of 33 cents per 100 pounds. This undercharge complainant admitted and expressed intention to pay.

Railroad spikes are used exclusively in track construction, while boat spikes, so called, are extensively used in bridge and other

structural work. They weigh about the same and are much alike, save that the railroad spike is shorter and has a larger head. The southern classification, in force at the time shipments moved and governing the tariffs applicable, provided a sixth class rating on less-than-carload shipments of nails and spikes, and a similar rating on less-than-carload shipments of railway track material and on bridge material. All these articles are, under the classification, rated as "special iron" in carloads, and there is a note to the effect that "on mixed carloads of articles included in special iron list the special iron rate will apply, subject to the estimated minimum carload weight." The sixth class rate, Richmond to Knoxville, at the time of the movements here involved, was 37 cents per 100 pounds and there were commodity rates on articles taking "special iron" rates of 29 cents per 100 pounds, carloads, and 33 cents per 100 pounds, less than carloads. On railway track material from Virginia cities, including Richmond, to Knoxville, there was a carload rate of \$4.50 per ton of 2,240 pounds. Railroad spikes are embraced in the list of articles taking railway-track material rates, but boat spikes are not. As a consequence the rate of \$4.50 was charged and collected on the railroad spikes, and the sixth class rate was assessed on the boat spikes.

Complainant originally attacked the rate applied to the boat spikes as unreasonable and discriminatory. At the hearing it was disclosed that the principal contention was for the application to boat spikes of the carload rate applicable to railroad spikes and the privilege of shipping boat spikes in mixed carloads with railroad spikes and other railway-track material.

Complainant contends that the commodity rate on railway-track material, and especially railroad spikes, is conditioned upon the use to which the articles are put; that boat spikes are essentially the same as railroad spikes, and that to deny as favorable a rate for boat spikes as for railroad spikes is to unduly discriminate against the former.

Defendant maintains that there is no competition between railroad spikes or other railway-track material and boat spikes; that they are never used interchangeably; that railroad spikes are included with other railway-track material under the commodity rate, in accordance with the common practice of permitting mixtures of articles designed and necessary for the completion of a given structure or article of manufacture; and that it could not reasonably extend the application of railway-track material rates to boat spikes without also permitting the inclusion of all sorts and sizes of nails and spikes. It further resists the demand to permit the mixing of these articles upon the ground that it would work to the detriment of other shippers who handle boat spikes only in less-than-carload quantities, and

that there is no general transportation or commercial demand for such mixing.

There is no complaint that boat spikes are not properly or reasonably classified; the Commission is not called upon to determine the inherent reasonableness of the carload and less-than-carload rates on this commodity. The commodity rate on track material is sought because it applies on railroad spikes. These spikes are commonly shipped in carloads, either straight or with other articles used in track construction. Boat spikes are seldom shipped in carloads from Richmond, and the record discloses no evidence that they are ever so shipped from any other point in the United States. If they are so shipped they are given the rate applicable to other articles in the same general class, either in straight or mixed carloads. The situation is suggestive of the probable reason for not establishing a commodity rate on boat spikes. Straight shipments of boat spikes and railroad spikes in less-than-carload quantities stand on the same footing.

No testimony was introduced to show that similar mixtures of boat spikes and railroad spikes or boat spikes and other railway-track material is permitted elsewhere in the United States, and it is obvious that few, if any, other shippers would profit were the prayer of complainant granted. In *Paper Mills Co. v. P. R. R. Co.*, 12 I. C. C. Rep., 438, and in other cases, the Commission held that it could not approve of the imposition by carriers of conditions which would benefit one or a few shippers, and which might, and perhaps would, correspondingly injure many others. It seems clear that such conditions would be created by granting the prayer of this complaint.

Upon the record we are unable to find that the rate assessed was unreasonable or subjected complainant to undue prejudice. It follows that the complaint must be dismissed, and an order will be entered accordingly.

22 I. C. C. Rep.

No. 4342.

EDWARD BYRNES, TRUSTEE FOR H. WOODS COMPANY,
BANKRUPT,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted January 4, 1912. Decided March 4, 1912.

Defendants' tariffs provided for standard and pony crates of certain dimensions for the shipment of cantaloupes from Colorado, upon estimated weights of 66 pounds and 53 pounds, respectively. Complainant shipped in so-called one-third size crates, for which there was no tariff provision for estimating weight. Upon complaint alleging unreasonable charges resulting from excessive weight; *Held*, That weight applied to shipments is not shown to have been excessive. Reparation denied.

H. C. Lust for complainant.

J. L. Coleman and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

R. B. Scott and *G. H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

James Stillwell for Pennsylvania Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; Pennsylvania Railroad Company; Northern Central Railway Company; and Philadelphia, Baltimore & Washington Railroad Company.

D. P. Connell for New York Central & Hudson River Railroad Company and Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The petition in this case, filed August 28, 1911, alleges that the H. Woods Company, a corporation, was a receiver and shipper of produce with principal place of business at Chicago, Ill.; that said company is now bankrupt; and that Edward Byrnes is the duly authorized trustee in bankruptcy. It is further alleged that said company shipped cantaloupes from points in Colorado to certain other points, for the transportation of which the defendants collected

charges based on certain weights and rates alleged to be unreasonable and discriminatory. Reparation is sought.

The cantaloupes, packed in crates, were shipped in carloads from stations in the Rocky Ford district mainly to eastern cities. The tariffs of the defendants specify certain dimensions for the crates, known as the standard crate, 12½ inches by 12½ inches by 24 inches, containing 3,901.5 cubic inches, estimated weight 66 pounds, and the pony crate, 11½ inches by 11½ inches by 22 inches, containing 3,037.375 cubic inches, estimated weight 53 pounds. Other dimensions are given for full-size crates, but they are not involved in this proceeding. No question is raised as to the reasonableness of the rates nor as to the dimensions or weight of the two sorts of crates above specified. Complainant's shipments were made in what are designated in this proceeding as one-third flat standard crates, 4½ inches by 13½ inches by 24 inches, containing 1,458 cubic inches, and one-third flat pony crates, 4 inches by 12 inches by 24 inches, containing 1,152 cubic inches. These crates were claimed to be one-third the dimensions, capacity, and weight of the crates specified in the tariffs, and therefore it is contended that the weight upon which the charges were based should have been one-third the weight of the crates specified, viz, 22 and 18 pounds, respectively. The tariffs contained no provision for the one-third size crates, and charges were assessed based upon their alleged actual weight of 30 and 25 pounds, respectively. This proceeding is brought to obtain reparation to the extent of the difference in the charges collected, that were based upon the weights of 30 and 25 pounds, respectively, and the charges that would have accrued based upon weights of 22 and 18 pounds, respectively.

The defendants deny that the weights upon which charges were assessed are excessive, and allege that the complainant is not the proper person to be awarded reparation should an order be entered. The weight of the shipments involved is a question of fact to be determined by the preponderance of evidence.

Complainant rested his claim mainly upon the theory that a so-called one-third-size crate should take one-third the weight estimated to be the weight of the standard crate. There was also some testimony respecting certain tests that were made by complainant by weighing a considerable number of crates of cantaloupes after this proceeding was instituted. It was claimed also that certain of the defendants have recently made refunds based upon similar claims.

In the absence of a tariff provision for estimating the weight, when the one-third-size crates were offered for shipment the agent of the initial carrier tested the weight by weighing at intervals a stated number of crates, it being impracticable to weigh all of them.

This test was participated in by the agent of the local express company, and as a result the crates were thereafter billed at 30 and 25 pounds, respectively. The complainant company was the shipper and executed the bills of lading and inserted the weights on basis of 30 and 25 pounds without protest to the defendants' agent. The tests applied by complainant to crates of cantaloupes subsequent to filing this complaint show that such crates weighed materially more than the weight contended for.

When the weight of a full-size standard crate is compared with the weight of a so-called one-third crate, it is palpable that the contention of complainant is unsound. The dimensions of the one-third crates and their cubical capacity are greater than one-third of the dimensions and cubical capacity of the standard crates, and the aggregate weight of three of them is greater than the weight of the standard crate, as further appears from the statement of weights offered in evidence by complainant. Taking into consideration the dimensions of the smaller crates and the additional tare for three packages, it results that an estimated weight for the smaller package based upon one-third of the weight of the standard package, under the facts of this case, will not suffice to overcome the evidence presented by defendants respecting the actual weight of the shipments.

The defendants subsequently incorporated in their tariffs a provision covering estimated weights of 30 and 25 pounds, respectively, for the one-third crates, and they assert that a like provision has been incorporated in the tariffs of other originating lines in Colorado.

Upon consideration of all the facts disclosed by the record, it is the conclusion of the Commission that the weight of the shipments upon the basis of which the defendants collected their charges has not been shown to have been excessive or discriminatory, and the relief prayed for must be denied.

An order will be entered in accordance with these conclusions.

22 I. C. C. Rep.

No. 4288.
LUDOWICI-CELADON COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted January 31, 1912. Decided March 4, 1912.

Consignor specified a route in bill of lading and also designated a rate therein not applicable to the route named; *Held*. That initial carrier, having failed to obtain further and definite instructions before forwarding, is liable for damages resulting from misrouting. Reparation awarded.

O. M. Rogers for complainant.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation with principal offices at Chicago, Ill., operates a plant at Coffeyville, Kans. By petition, filed July 31, 1911, it alleges that an unreasonable rate was charged by defendants for the transportation of one carload of roofing tile, roofing felt, cement, and nails, shipped from Coffeyville to Spokane, Wash. The claim for reparation is based on the failure by the initial carrier to forward the shipment over the route via which the rate designated by complainant in the bill of lading was applicable.

The shipment consisted of 34,189 pounds of roofing tile, 1,080 pounds of roofing felt, and 831 pounds of cement and nails, and was accepted by the Missouri Pacific Railway Company under a bill of lading dated September 9, 1909. Complainant specified routing in the bill of lading as follows: Missouri Pacific; Chicago, Burlington & Quincy; and Northern Pacific. It also designated therein the class-D rate of 79 cents, which it appears did not apply over the route specified, but was in effect from Coffeyville to Spokane at time of shipment via several other routes in connection with the Missouri Pacific. That carrier, without obtaining further instructions, forwarded the shipment over the route named in the bill of lading, and complainant paid freight charges thereon amounting to \$329.17. Via any of the routes over which the joint class-D rate of 79 cents applied

the total charges on the shipment would have been \$302.97, made up by applying said rate to the 34,189 pounds of roofing tile; the third class rate of \$1.83 to the 1,080 pounds of roofing felt; and the fourth class rate of \$1.58 to the 831 pounds of cement and nails. The initial carrier, having failed to obtain further and definite instructions from the consignor before forwarding the shipment, and having sent same over a route via which a higher rate than the one designated by the complainant was applicable, must be held responsible for the damages resulting from the misrouting. *Conference Ruling 286 (f)*.

We find that complainant made the shipment in accordance with the above statement of facts and paid charges thereon in the sum of \$329.17, which were unreasonable so far as they exceeded \$302.97; and that complainant has been damaged to the extent of the difference between said amounts; that said damage was due to the misrouting of said shipment by the Missouri Pacific Railway Company; and that complainant is therefore entitled to an award of reparation against the Missouri Pacific Railway Company in the sum of \$26.20, with interest thereon from the 30th day of September, 1909. An order will be entered in accordance with the findings herein announced.

No. 4279.
IRELAND & ROLLINGS
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

Submitted October 11, 1911. Decided March 4, 1912.

Rates from Fort Scott, Kans., to Memphis, Tenn., and Lawton, Okla., for the transportation of counters and shelving in carloads found to have been unreasonable to the extent that they exceeded the rates applicable to the transportation of store furniture. Reparation awarded.

O. M. Rogers for complainants.
E. T. Wilcox for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainants are engaged in the manufacture of store and office furniture at Fort Scott, Kans. By petition, filed July 31, 1911, they allege that unreasonable rates were charged by defendant for the transportation of certain carload shipments of counters and shelving from Fort Scott to Memphis, Tenn., and Lawton, Okla. Reparation is asked.

The shipments to Memphis, consisting of three carloads, weighing 15,240, 15,240, and 19,550 pounds, respectively, moved December 28, 1909, over the lines of the defendant, billed as "counters and shelving." Western classification, I. C. C. No. 5, in effect at time of shipment, provided third class rating, subject to a minimum weight of 12,000 pounds on—

Lumber and manufactures of.—Counters, shelving, and wooden partitions,
• • • for stores, offices, and saloons (not including plate glass or mirrors).
(Subject to rule 6-B.)

Under this provision freight charges were assessed in the total sum of \$225.14, based on the third class rate of 45 cents from Fort Scott to Memphis. There was an undercharge of \$1.62 on one of the shipments billed at 15,240 pounds, due to the fact that it was loaded in a 46-foot car, which, under rule 6-B, should have been charged at 15,600 pounds. In the same classification third class

rating, subject to a minimum weight of 12,000 pounds, was also applicable on—

Furniture, new and secondhand forwarded for sale or speculation, c. l.—Bank, store, saloon, and office furniture, consisting of: Arm rails, back-bar mirrors, bottle cases, chairs, counters, counter fittings, desks, foot rails, metal brackets for arm and foot rails, refrigerators, tables, and work boards. (Subject to rule 6-B.)

Contemporaneously, the defendant published and filed a tariff which provided the following commodity rate basis:

Furniture, minimum weight 20,000 pounds, classified in the western classification as third class.—12½ cents per 100 pounds less than third class.

Complainants contend that their shipments were in fact store furniture and but for the shelving would have been entitled under the commodity item to a rate of 32½ cents. At the hearing the defendant admitted that the shelving might reasonably have been included with the other articles specifically mentioned; but that not having been so included, the rate had been assessed under the published tariffs in effect at the time.

Counters and shelving are essentially store furniture, and are as desirable traffic as the other articles mentioned in the classification under the item "furniture;" the transportation risk and service are practically the same, and we think they should not take a higher rate than that applicable on other articles of store furniture specifically mentioned in the classification. We find, therefore, that the rate of 45 cents charged complainants was unreasonable to the extent that it exceeded 32½ cents, the rate applicable to "store furniture," in carloads, at the time shipment moved, subject to a minimum weight of 20,000 pounds.

We further find that complainants made the shipments alleged in the petition and described in this report; that they paid charges thereon at the rate of 45 cents, herein found unreasonable; that they have been damaged to the extent the charges assessed at said rate exceeded the charges that would have accrued at the reasonable rate of 32½ cents per 100 pounds, subject to a minimum weight of 20,000 pounds per car, and that complainants are therefore entitled to an award of reparation in the sum of \$30.14, with interest from December 28, 1909, less the undercharge of \$1.62 referred to above.

Complainants also shipped on August 10, 1909, two carloads of "store fixtures," actual weights 20,100 pounds and 17,300 pounds, respectively, over the lines of the defendant from Fort Scott to Lawton, Okla. The undisputed evidence in the record is that these two cars of "store fixtures" consisted, in fact, of counters and shelving. Leland's tariff, I. C. C. No. 609, in effect at time of shipment, governed by southwestern lines classification exceptions and rules-circular

3-A, I. C. C. No. 585, contains the following commodity rating (page 300, item 368):

Furniture, arm rails, back-bar mirrors, bookcases (sectional) and filing cabinets, bottle cases, chairs, counters, counter fittings, desks, door, window, and bar screens, foot rails, partitions, prescription cases, refrigerators, tables, wainscoting and office railing, wooden mantels, and work boards, when forming part of bank, store, saloon, or office furniture, straight or mixed, minimum weight 14,000 pounds per 36-foot car, subject to item 53, southwestern lines classification exceptions and rules-circular 3-A, or reissues, 73 cents per 100 pounds.

The car containing 20,100 pounds, being a large car 40 feet 5½ inches long, classed as vehicle-carrying equipment, was, under the rules-circular, subject to a minimum weight of 20,300 pounds. Upon the basis of the commodity rate of 73 cents, which the defendant evidently intended to apply, there was an overcharge on the two shipments amounting to \$2.28.

In the same tariff (page 299, item 367) a commodity rate is published, reading as follows:

Furniture (new) and furniture frames, straight or mixed carloads, including wooden mantels and wood work boards. Note.—Applies on all articles on which ratings are carried under the heading of furniture in western classification, 60 cents per 100 pounds.

The articles named in the western classification under the heading of "furniture," so far as they are material, have already been set out in a preceding paragraph of this report; and, as we have seen, they include store furniture, counters, counter fittings, etc. It is the contention of complainants—and we share their view—that the list in the classification should also include shelving. It is the further contention of complainants that their shipment would, under item 299 of Leland's tariff, above quoted, be entitled to a rate of 60 cents.

The confusion of the situation is apparent. Item 367, page 299, establishes a commodity rate of 60 cents upon *all articles on which ratings are carried under the heading of "furniture" in western classification*. Item 368, page 300, immediately following, publishes a commodity rate of 73 cents upon a large list of articles, most of which are included in the classification ratings, and therefore in the 60-cent rate. This apparent conflict in the rates is not explained or even alluded to in the record.

For the reasons indicated in connection with the Memphis shipments, we hold that it was unreasonable not to include shelving with counters in the classification rating of articles under the heading of furniture; and that were it so included, complainant's shipments would, under Conference Ruling 239, providing that where a tariff contains conflicting rates the lower shall be applied, be entitled to the benefit of the 60-cent rate.

Upon the record we find that the complainants made the shipments described as "store fixtures;" that they actually consisted of counters and shelving, upon which they paid charges at the unreasonable rate of 73 cents; that in the exaction of charges so assessed, amounting to \$276.76, including an overcharge of \$2.28, complainants have been damaged to the extent the charges exceeded the sum of \$224.40, which is the amount that would have accrued at the reasonable rate of 60 cents applied to the actual weight of the shipments; and that complainants are therefore entitled to an award of reparation in the sum of \$52.36, with interest thereon from August 10, 1909.

Defendant will be expected to eliminate the conflict in the items of the tariff referred to and will be required to establish and for a period of two years maintain and apply to the transportation of counters and shelving in carloads, from Fort Scott, Kans., to Memphis, Tenn., and Lawton, Okla., rates not in excess of the rates contemporaneously in effect over its line on other store furniture from and to said points respectively. An order will be entered accordingly.

22 I. C. C. Rep.

No. 3981.

WISCONSIN PULP WOOD COMPANY
v.
GREAT NORTHERN RAILWAY COMPANY.

Submitted September 25, 1911. Decided February 5, 1912.

Rates on pulp wood from Minnesota producing points to Superior, Wis., found to be unreasonable, and reasonable rates prescribed for the future.

F. J. Streyckmans for complainant.

J. D. Armstrong for defendant.

REPORT OF THE COMMISSION.

By the Commission:

The complainant is a corporation located at Neenah, Wis., engaged in the purchase and sale of pulp wood. Its petition, filed April 1, 1911, alleges that the rates charged for the transportation of pulp wood from Casco, Bruce, Cardiff, Goodland, Swan River, Wawina, Deer River, and Ericson's Spur, Minn., to Superior, Wis., are unjust and unreasonable, and seeks reparation upon a number of shipments that moved under the rates attacked.

The rates on lumber from the territory involved to Superior are less than the rates on pulp wood. Defendant asserts that these lumber rates are abnormally low on account of the competition of the Duluth, Missabe & Northern Railway. Complainant calls attention to the fact that pulp wood is a very low grade commodity, and that the rates on lumber cover numerous manufactured articles as well as lumber. It is further stated that a carload of pulp wood loaded to the minimum weight of 40,000 pounds is worth at the point of origin about \$42, while at the same point of origin a carload of lumber loaded to the minimum of 30,000 pounds is worth approximately \$270.

The specific rates complained of are 4½ cents per 100 pounds from Casco to Superior, 5 cents from the other points in the Mesaba territory, and 7.3 cents from Deer River and Ericson's Spur. The rates for the transportation of lumber from all points in the Mesaba territory are a half cent lower than those on pulp wood. From Deer River and Ericson's Spur the lumber rates are 1.3 cents lower than the rates on pulp wood. The distance from Casco to Superior is

22 I. C. C. Rep.

84 miles. To the points covered by the blanket rate of 5 cents the average distance is 93 miles. From Deer River and Ericson's Spur the distances are 122 and 125 miles, respectively.

Admitting defendant's contention that the rates on lumber herein referred to are somewhat low, due to competition of another carrier, we think that such a low grade of traffic as pulp wood should ordinarily take a lower rate than lumber; and upon consideration of the record in this case we are of the opinion, and find, that defendant's rates upon pulp wood from the producing territory here involved to Superior should in no case exceed the rates now charged for the transportation of lumber between said points, and an order will be entered accordingly.

We further find that in so far as complainant paid charges at the rates herein found to be unreasonable it has been damaged, and reparation is awarded on that basis.

There is some confusion in the record as to just who paid the freight charges on the shipments upon which reparation is sought. Complainant should furnish a statement of the shipments upon which the rates herein found to be unreasonable have been assessed, together with satisfactory proof that the freight charges were paid by it, and upon the approval of same by the Commission an order of reparation will be entered.

22 I. C. C. Rep.

No. 4095.

BALTIMORE CHAMBER OF COMMERCE

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL

Submitted January 11, 1912. Decided March 11, 1912.

Complainant assails defendants' rates on grain from various producing points in Indiana and Illinois to Baltimore, Md., as unreasonable and as unduly discriminatory against Baltimore as a grain market. Upon the facts of record; *Held*, That the rates complained of are not shown to be either unreasonable or unduly discriminatory, as alleged. Complaint dismissed.

Arthur George Brown and John B. Daish for complainant.

Edward Barton and William Ainsworth Parker for defendants.

J. C. Lincoln for Merchants' Exchange of St. Louis, intervener.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complaint in this proceeding, filed May 12, 1911, assails defendants' rates, export and domestic, on grain in carloads from various points in Indiana and Illinois to Baltimore, Md., as unreasonable and discriminatory and unduly prejudicial to the interests of Baltimore as a grain market.

Prior to May 1, 1907, the rates assailed were lower than at present. The following table shows the former and the present rates, together with the advances:

To Baltimore from —	Export rate per 100 pounds.			Domestic rate per 100 pounds.		
	1907.	1911.	Advance.	1907.	1911.	Advance.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Lawrenceburg, Ind.	11.0	14.5	3.5	13.5	15.0	1.5
North Vernon, Ind.	11.5	15.5	4.0	14.0	16.0	2.0
Vincennes, Ind.	12.5	17.5	5.0	15.0	19.0	4.0
Ashland, Ill.	15.0	18.0	3.0	14.0	19.5	5.5
Springfield, Ill.	14.5	17.5	3.0	17.5	19.0	1.5
Bearstown, Ill.	15.0	18.0	3.0	14.0	19.5	5.5
Peoria, Ill.	13.5	17.5	4.0	16.0	19.0	3.0
Shawneetown, Ill.	15.0	18.0	3.0	14.0	19.5	5.5
Vanalata, Ill.	14.5	17.5	3.0	17.5	19.0	1.5
Greenup, Ill.	13.5	17.5	4.0	16.0	19.0	3.0
Terre Haute, Ind.	12.0	16.0	4.0	14.5	17.5	3.0
Decatur, Ill.	13.5	17.5	4.0	16.0	19.0	3.0
Paris, Ill.	13.0	17.5	4.5	16.0	19.0	3.0
Pana, Ill.	14.5	17.5	3.0	17.5	19.0	1.5
Oldry, Ill.	13.5	17.5	4.0	16.0	19.0	3.0

Complainant also assails the “proportional” or “reshipping” rates on grain to Baltimore, export and domestic, from various designated transit points, as in violation of sections 2 and 4 of the act. These rates and the points from which they apply are shown in the following table:

To Baltimore from—	Export rate per 100 pounds.	Domestic rate per 100 pounds.
	<i>Cents.</i>	<i>Cents.</i>
Chicago, Ill.....	11.5	13.0
Cincinnati, Ohio.....	12.5	16.0
Beardstown, Ill.....	14.5	16.0
Springfield, Ill.....	13.0	14.5
Ashland, Ill.....	13.0	14.5
East St. Louis, Ill.....	14.5	16.0
Peoria, Ill.....	13.0	14.5

The local rates on grain to Baltimore from certain Ohio points are also involved. The points and the rates as formerly and at present in force are stated in the following table:

To Baltimore from—	Miles.	Export.		Domestic.	
		Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.
		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Hamden, Ohio.....	451	12.0	5.3	12.5	5.5
Greenfield, Ohio.....	505	13.0	5.1	13.5	5.3
Portsmouth, Ohio.....	507	13.5	5.3	14.0	5.5

The points named in the first table are originating centers served by the defendant carriers and other lines which penetrate that territory. They are situated in a section of country which is a large producer of wheat and corn.

Baltimore was formerly the chief port of export for grain from this territory, and a large domestic consumer as well. In recent years the movement direct to Baltimore has greatly decreased. The change, complainant contends, is due to the advanced rates via defendants’ lines. Defendants deny this and contend that the change is due to better grain markets elsewhere, especially in the south, and to other causes not within their control.

The Merchants’ Exchange, of St. Louis, was allowed to intervene as a party, and has submitted testimony. It states that it “does not undertake to affirm or deny the reasonableness or unreasonableness of the rates in themselves.” Its avowed object is to support the principle of “proportional” or “reshipping” rates, in so far as attacked by complainant, and to show that the “diversion of business from the Baltimore market” has been “due to other causes than a rate adjustment.”

We have no doubt that the increased rates have had much to do with the decrease in the movement to Baltimore. It can not be denied that the cost of transportation is a potent factor in determining the route which traffic will take. If confronted by increased rates via routes over which it has been accustomed to move, it will naturally seek other outlets. But this is not the only reason for the change. The record shows that in recent years there has been considerable increase in the demand for grain in the south, and shipments of both wheat and corn to southern markets have increased accordingly. The tendency has been to the south and southeast—Virginia, the Carolinas, Alabama, Georgia, etc.—through Cincinnati and Louisville. Another matter worthy of note is that the production of wheat and corn in the territory in question has decreased considerably in recent years, while the home demand has measurably increased, and this has resulted in diminishing shipments to distant consuming markets. It also appears that the surplus of grain for export, speaking generally, has not been as large in the last three or four years as formerly, and that export movements have been correspondingly less. It can not be doubted that these things have contributed largely to bringing about the changed commercial relations of Baltimore to the territory in question.

A fact not to be overlooked in this connection is that although in the last three or four years the production of corn in the south has very considerably increased, yet the heavier demand of the southern markets has not been satisfied by the increased home production.

Chicago is a grain market that draws directly upon the producing fields of Indiana and Illinois. Its elevators are supplied with equipment for cleaning, drying, cooling, and otherwise treating grain of all kinds. While Baltimore is likewise a great market, and has elevator facilities for the like treatment of grain, Chicago is much nearer the original sources of supply, and in this respect undoubtedly enjoys natural advantages which Baltimore does not possess.

The present rates on grain from Chicago to Baltimore, of 11.5 cents export, and 13 cents domestic, are what are known as "proportional" or "reshipping" rates. Prior to February 1, 1905, the rates both in and out of Chicago were locals. Since that date through rates have been in force from the territory in question via other than defendants' lines. The defendants themselves do not publish through rates via Chicago. Since February 1, 1910, there have been no published local rates on grain from Chicago to Baltimore, and proportional or reshipping rates have been the only rates in force.

The rates stated in the first table above are so adjusted as to be on a level with the through rates to Baltimore from the same originating points. In other words, the rate for the direct or short-line haul

from any particular Indiana or Illinois point is the same as the rate for the longer route via Chicago. For example, from Vincennes, Ind., to Baltimore, the short-line distance is 767 miles and the export rate is 17.5 cents. The distance via Chicago is 1,031 miles, but the through rate and the rate via the short line are the same. The same principle of adjustment applies to the other points of said table, in so far as through rates via Chicago apply. Under the tariffs which provide through rates from the originating points grain may be unloaded into elevators at Chicago and there treated in the manner stated above before being shipped to eastern markets. Like privileges are accorded at the other transit points named in the second table above.

The distance to Baltimore from the points named in the first table above, together with the present rates, export and domestic, are as follows:

To Baltimore from—	Miles.	Export.		Domestic.	
		Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.
		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Lawrenceburg, Ind.	601	14.5	4.8	15.0	5.0
North Vernon, Ind.	651	15.5	4.8	16.0	4.9
Vincennes, Ind.	767	17.5	4.6	19.0	5.0
Ashland, Ill.	951	18.0	3.8	19.5	4.2
Springfield, Ill.	900	17.5	3.9	19.0	4.2
Beardstown, Ill.	976	18.0	3.6	19.5	4.0
Peoria, Ill.	897	17.5	4.0	19.0	4.3
Shawneetown, Ill.	896	18.0	4.0	19.5	4.3
Vandalia, Ill.	873	17.5	4.0	19.0	4.4
Greenup, Ill.	819	17.5	4.3	19.0	4.6
Terre Haute, Ind.	773	16.0	4.1	17.5	4.5
Decatur, Ill.	852	17.5	4.1	19.0	4.5
Paris, Ill.	793	17.5	4.4	19.0	4.8
Pana, Ill.	888	17.5	3.8	19.0	4.3
Olney, Ill.	712	17.5	4.9	19.0	5.3

The average distance is 823 miles. The average export rate is 17.2 cents, or 4.1 mills per ton-mile, and the average domestic rate 18.5 cents, or 4.5 mills per ton-mile. Under the former adjustment the average export rate was 13.5 cents, or 3.3 mills per ton-mile, and the average domestic rate was 16.2 cents, or 3.9 mills per ton-mile.

The average distance to Baltimore from the points named in the third table above is 487 miles. The average export rate under the present schedule is 12.8 cents, or 5.2 mills per ton-mile, and the average domestic rate 13.3, or 5.4 mills per ton-mile. Under the former adjustment the average export rate was 9.5 cents, or 3.8 mills per ton-mile, and the average domestic rate was 11.5 cents, or 4.7 mills per ton-mile.

The distances to Baltimore from the points named in the second table above, together with the present proportional or reshipping rates on grain from those points to Baltimore, are shown in the following table:

In so far as complainant's contentions involve a comparison of local rates with proportional or reshipping rates, it is to be borne in mind that differences in the character of rates must be recognized. The Commission has ruled that in determining questions under section 4, rates of the same kind must be compared with one another. In other words, transshipment rates must be compared with transshipment rates, proportional rates with proportional rates, and so on. That ruling is attacked in the brief of counsel for complainant, but we see no reason upon the present record to depart from it. This disposes of the contention that the rates are in violation of the fourth section.

On the question of the reasonableness of the rates complainant's case rests chiefly upon the following propositions: (1) That no justification appears for the advances of 1907, and (2) that the effect of such advances has been practically to prohibit the movement of grain to Baltimore via defendants' lines and to force it to move through Chicago, or to markets elsewhere than in the east. These things, it is contended, are sufficient to warrant a finding that the rates are unreasonable.

There would be force in the contention if the premises stated were sound. But they are not. True, the defendants have not submitted testimony intended primarily to justify the advanced rates, but it is to be remembered that the burden of the issue in this respect is not with them. Nor can it be said that the diversion of grain from Baltimore to other markets is due entirely to the advanced rates. The better prices in the southern markets, the decrease in production and increase in consumption in the producing territory, and the decrease in exports generally, as well as the advanced rates, have all had their influence to a common end, and it is not possible to accurately measure them independently of one another.

The record indications are all to the effect that the higher rates have not resulted in advantage to defendants, but rather the contrary. They would prefer the grain to move over their own lines to Baltimore, as it formerly did. On this subject the general freight agent of the Baltimore & Ohio Southwestern testified as follows:

I would prefer that all our grain should go to Baltimore, rather than through Louisville and Cincinnati, if we could force it that way; but we can not do it.

Mr. DAIGH. You mean at present rates?

Mr. McLAUGHLIN. At any rate; I do not care what the rate is. I would rather see it all go to Baltimore, so as to get the long haul; but we can not control it. It is controlled by the markets to the south and elsewhere. I have called the attention of our Baltimore friends frequently to the fact that New Orleans and Cincinnati were outbidding them in our territory. We feel that we would like to have all our grain go to Baltimore, both wheat and corn, but we can not do it. The commercial market conditions are such that we can not market to Baltimore.

Undoubtedly it would be to the advantage of defendants to have the grain move to Baltimore, instead of going south, or via Chicago. In that event they would get the larger revenue incident to the longer haul. In an endeavor to hold the grain for eastern markets to their own lines, the defendants do not publish through rates via Chicago at all. But even by this means they can not control the movement.

Complainant insists that the rates in question should be reduced to the level of the proportional or reshipping rates from Chicago and the other transit points mentioned. But we can not accept such standard as conclusive. As already pointed out, comparisons of different kinds of rates are not proper in determining controversies under section 4. For like reasons they should not be accepted as controlling in determining the reasonableness of rates under section 1.

That as a grain market Baltimore has in recent years suffered some injury because of the varying conditions herein mentioned is apparent from the record. But we are unable to find that such injury is the result of undue discrimination by these defendants. They do not control the rates from the producing territory into Chicago, or the through rates to eastern destinations via Chicago. They are not in a position, and have not the power, to remove the trouble of which Baltimore complains. If the rates in question were reduced there would be no means of preventing similar reductions in the rates via Chicago, in which event Baltimore would be left in the same position she now occupies. The defendants would be powerless to furnish the desired relief by their own act.

When the rates in question were advanced the same advances, relatively, were made to other eastern points, and also to points in other directions. On this subject the testimony for defendants is in part as follows:

Whatever advance has been made in rates to Baltimore, there has been a relative advance to all other base points—New York, Boston, and Philadelphia, and so on—all the way through trunk line territory. I might go further than that and say that in the advance of rates to Baltimore and Philadelphia we have at all times made an advance in the rates to the Ohio River crossings going to the south, so as to keep up a relative adjustment. For instance, the rate used to be 7 cents from Illinois territory to Cincinnati. It is now 9. The same thing as to Louisville.

Of course the rate varies throughout the state of Illinois. • • • But take around Springfield and Beardstown, the rate is 9 cents now, where it used to be 7; that being brought about by advances made in trunk line territory so as to keep the proper and relative adjustments as between the territories. So that, • • • there never has been an advance made to Baltimore without corresponding advances in all other directions.

The same witness further testified thus:

I say this, that if we were to reduce the rate for instance from Flora, Ill., where it is now 17½ cents, and throughout that territory, say, down to 14½

cents, which is the proportional rate from East St. Louis, it would throw the alignment out all through that territory.

It thus appears that defendants' rates to Baltimore are adjusted with relation to rates via Chicago that are not controlled by them, and also with relation to rates to other eastern points, and to points in other directions. It can not be doubted that any material reduction in these rates would be followed immediately by corresponding reductions elsewhere, and would result in a readjustment of the entire rate fabric to the same relative basis as that on which it now rests. It needs no argument to show that such result would be of no material benefit to Baltimore.

It is not within the power of this Commission to equalize economic conditions, or to place one market in a position to compete on equal terms with another market as against natural advantages. Nor have we the power to require railroads, in the face of varying trade conditions to adjust their rate schedules in such manner as to insure to a market the continuance of a trade it has once enjoyed. The requirements of the law are that transportation rates must be reasonable, and must not be unjustly discriminatory or give undue preference.

The shippers from the producing territory are not complaining. They have not been deprived of a market for their grain, and are apparently satisfied with the markets they now reach. At all events they are not asking that defendants' rates be reduced. So far as the record shows Baltimore alone claims to be injured by the existing situation.

Upon consideration of all the facts and circumstances we are unable to find that the rates complained of are unreasonable in themselves, or that defendants are guilty of undue discrimination in the premises. It follows that the complaint must be dismissed, and an order will be entered accordingly.

INVESTIGATION AND SUSPENSION DOCKET Nos. 26, 26-A, 26-B, AND
26-C.

IN THE MATTER OF THE INVESTIGATION AND SUS-
PENSION OF ADVANCES IN RATES FOR THE TRANS-
PORTATION OF COAL BY THE CHESAPEAKE & OHIO
RAILWAY COMPANY, BALTIMORE & OHIO RAILROAD
COMPANY, NORFOLK & WESTERN RAILWAY COM-
PANY, THE KANAWHA & MICHIGAN RAILWAY COM-
PANY, AND THEIR CONNECTIONS.

Submitted January 27, 1912. Decided March 11, 1912.

1. From November, 1910, to March, 1911, defendants filed with the Commission tariffs advancing their rates upon lake coal, which is coal originating in the West Virginia coal fields and moves, during the season of open navigation on the great lakes, to various ports on Lake Erie for transshipment by vessel beyond. Shippers protested that the proposed rates were unreasonable, and they were suspended pending investigation.
2. It appears that the Chesapeake & Ohio, Kanawha & Michigan, and Baltimore & Ohio made no showing which justifies the Commission in holding that the increased rates are just and reasonable; *Held*, That these three defendants may not impose upon the traffic concerned higher rates than those in effect on January 1, 1910.
3. As to the Norfolk & Western, the Commission is persuaded that the imposition of the increased rates here involved will not impose an unjust and unreasonable charge for the transportation service involved.

William A. Glasgow, jr., and J. W. Chapman for various complaining shippers and certain intervening petitioners.

Vinson & Thompson and Brown, Jackson & Knight for United States Coal & Oil Company and others, interveners.

E. H. Gans and J. W. Lord for Consolidated Coal Company and others.

G. H. Caperton for New River Collieries.

Squire, Sanders & Dempsey, and W. M. Duncan for Wheeling & Lake Erie Railroad Company.

R. Walton Moore, J. H. Holt, C. J. Rixey, jr., Lucian H. Cocks, and *J. I. Doran* for Norfolk & Western Railway Company.

George W. Stevens, E. D. Hotchkiss, and H. T. Wickham for Chesapeake & Ohio Railway Company and Hocking Valley Railway Company.

J. T. Hendricks for Western Maryland Railway Company and George's Creek & Cumberland Railroad Company.

A. P. Burgwin for Pennsylvania Company and others.

Morison R. Waite for Cincinnati, Hamilton & Dayton Railway Company.

W. N. King for Kanawha & Michigan Railway Company.

H. L. Bond and *W. A. Parker* for Baltimore & Ohio Railroad Company.

O. E. Butterfield for New York Central lines.

Frank Lyon for Interstate Commerce Commission.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

We have here involved the reasonableness of certain proposed rates upon lake coal originating in the West Virginia coal fields. "Lake coal" is coal which moves during the season of open navigation on the great lakes to various ports on Lake Erie for transshipment by vessel beyond. Five districts constitute what are here referred to as the West Virginia coal field: The Fairmont district in the northern portion of the state, the Kanawha and Thacker districts farther south, and the New River and Pocahontas districts still farther south. There are four originating carriers, all of whom have been made parties to this proceeding: The Baltimore & Ohio, Kanawha & Michigan, Chesapeake & Ohio, and Norfolk & Western roads.

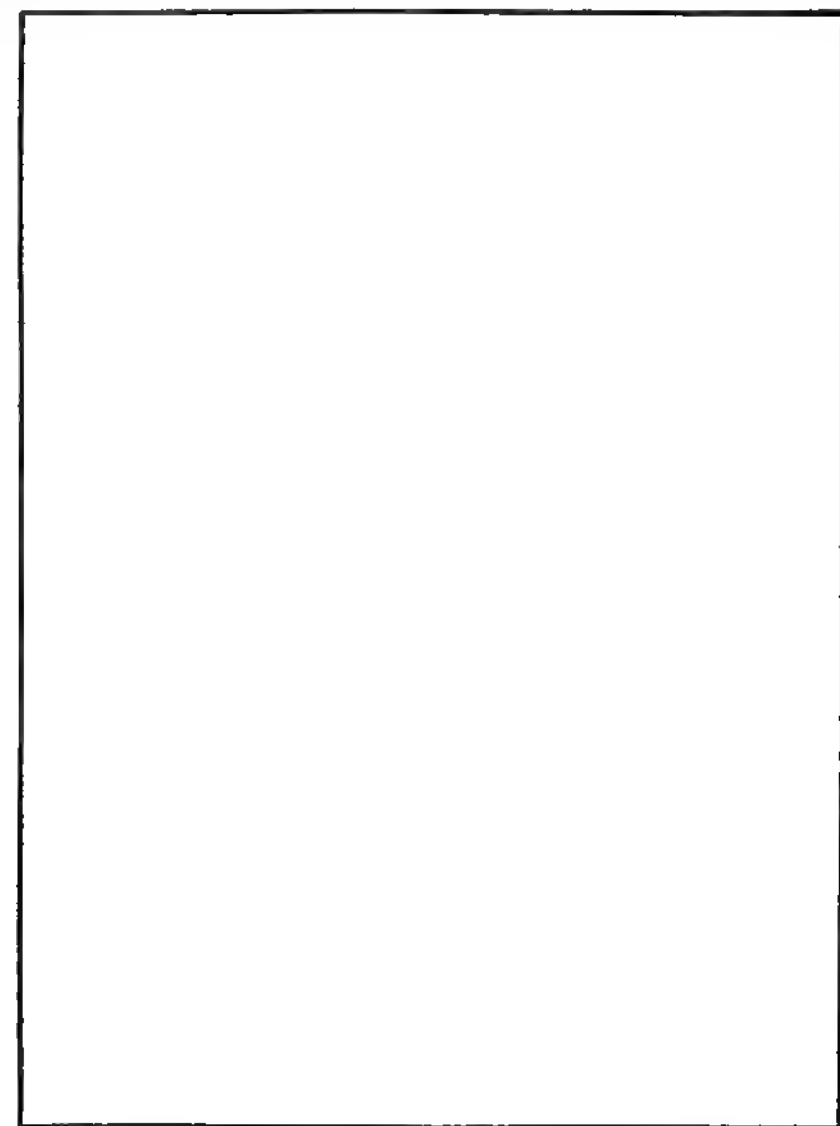
The Baltimore & Ohio Railroad, which serves the Fairmont district, reaches its lake ports without the intervention of a connecting carrier. The Chesapeake & Ohio Railway, which serves the Kanawha and New River districts, has two routes, one by way of Cincinnati, where it connects with the Cincinnati, Hamilton & Dayton Railway, to Toledo, Ohio; the other by the Kanawha & Michigan and Hocking Valley railways, by which such coal is handled via Gauley, W. Va., and Charleston, W. Va., to Toledo. The Kanawha & Michigan Railway, serving the Kanawha district, reaches Toledo over the Toledo & Ohio Central and the Hocking Valley railways. The Norfolk & Western, connecting with the Pennsylvania Company, makes delivery at Sandusky, and by way of the Hocking Valley reaches Toledo. The accompanying map shows the situation.

The present lake-coal rates, which have been in effect for some years, and result from a raise of 5 cents in 1906, are as follows, per net ton of 2,000 pounds:

From the Fairmont district (B. & O.)	\$0.98
From the Kanawha district (C. & O.), Kanawha district (K. & M.), and Thacker district (N. & W.)	.97
From the New River district (C. & O.) and Pocahontas district (N. & W.)	1.12

The increases proposed are, in the Fairmont rate $3\frac{1}{2}$ cents per ton, and in each of the others $2\frac{1}{2}$ cents, making the new rates per net ton:

Fairmont (B. & O.)	\$1.00
Kanawha (C. & O. and K. & M.) and Thacker (N. & W.)	1.06 $\frac{1}{2}$
New River (C. & O.) and Pocahontas (N. & W.)	1.21 $\frac{1}{2}$



Under both the old and new rates there was and is an additional terminal charge of 5 cents per net ton for loading the coal at the lake port into the vessel. (Further detail as to these rates and routes may be found in table No. 1 of appendix.)

It is interesting to note, and perhaps is explanatory of much that is in this record, and of more that is not in it, that the Baltimore & Ohio on its haul from Fairmont to the lakes receives 4 mills per ton-mile under the present rates. The Chesapeake & Ohio—on its short line via the Kanawha & Michigan, of which it owns approximately one-half, and the Hocking Valley, of which it owns nearly two-thirds—receives a rate from the Kanawha field of 2.95 mills and from the New River field of 3.06 mills. The Kanawha & Michigan and Hocking Valley, which serve the Kanawha field, receive an average revenue of 2.92 mills from the field to Toledo, and of this the Kanawha & Michigan receives a division which yields 3.27 mills and the Hocking Valley 2.67 mills. From the Kenova district the Norfolk & Western and the Pennsylvania companies, delivering coal at Sandusky, earn 2.97 mills; from the Thacker district, 2.80 mills; from the Tug River district, 2.90 mills; and from the Pocahontas district, 2.68 mills. The figure 2.76 mills, which is used throughout in this report, represents actual earnings per ton-mile of the Norfolk & Western Railway alone during 1910 on lake-cargo coal originating at mines between Bluefield and the Ohio River, included in this being all the coal from the Kenova, Thacker, Tug River, and Pocahontas districts. The fact that the average is 2.76 indicates how large a proportion of the coal comes from the more distant field (the Pocahontas field) and includes movement from the very mouth of the mine to the ship's side.

These advanced rates were filed with the Commission in November, 1910. Protests were received from a large number of shippers, and the rates were suspended by the Commission pending investigation for the full period permitted by the statute, and were later suspended until March 1 by voluntary action of the carriers.

HISTORY OF INCREASED RATES.

"It is abundantly evident," says the Baltimore & Ohio in its brief in this case, "that the primary cause of disturbance in the lake-coal trade which ultimately led to the advances in rates involved in this proceeding was the greatly increased production of the southern West Virginia fields, particularly during the years 1908 and 1909. The Pittsburgh operators complained that the railroads serving those fields were unduly favoring the operators in that territory by the establishment of very low rates, and that as a result of this favoritism the southern West Virginia operators were enabled to sell their coal in the markets at the head of the lakes at such low prices as rendered the operation of the Pittsburgh field unprofitable."

While in 1905 the West Virginia mines shipped to the lake ports but 2,000,000 tons, in 1911 they shipped over 7,000,000 tons. During the same time the Pittsburgh district increased its lake cargo tonnage

from 6,249,054 to 9,744,833, and the Ohio district from 2,126,608 to 4,019,544. Whereas in 1905 the West Virginia district shipped but 19.86 per cent of the coal that went over the lakes, it now ships 34.19 per cent of such coal. In table 2 of the appendix will be found a statement for the past 11 years of the lake-coal tonnage from the three competing districts.

It appears that in the early part of 1909 the traffic managers of the various West Virginia, Pennsylvania, and Ohio railroads held a meeting "for the purpose of announcing to one another the rates for the season then ensuing of their respective roads." A committee representing the Pittsburgh and Ohio No. 8 coal districts appeared before these traffic managers and demanded that the differentials existing against the West Virginia fields on lake coal should be increased. Upon this demand there followed a number of meetings, first of traffic men only and later of executive officers of the carriers, in which the railroads out of West Virginia seriously contended against any change in the existing differentials, and that the rates that they were receiving on lake coal were sufficient. "Threats of a rate war," however, brought about an agreement between the carriers, who attempted in 1909 to make the increases here proposed. The West Virginia shippers secured an injunction against the going into effect of such rates, but upon the courts holding that this Commission had exclusive power to deal with the reasonableness of rates, this injunction was dissolved and the rates were filed by the carriers as noted above.

It is a fair conclusion from the testimony offered upon this subject that these rates from West Virginia fields were not increased because they were unreasonable in themselves, but were increased because of a desire to increase the differential between the rates from the West Virginia fields on lake coal and the rates from the Ohio and Pennsylvania fields. This is indicated by the resolution adopted by the executive officers of the various roads at their meeting in March, 1909, in which they called upon the operators to meet with them "for the purpose of discussing the rate situation to the lakes and endeavoring to arrive at an understanding as to what basis of differentials should be used in constructing the rates from the various districts to Lake Erie points." At this meeting the West Virginia carriers "deprecatd any change in the present differentials." The president of the Norfolk & Western testified that the meeting was for the adjustment of rates; that he did not recall that any question was raised regarding the reasonableness of the rate. Prior to the meeting with the operators, on March 20, 1909, the president of the Norfolk & Western became convinced that it was advisable to increase the West Virginia rates. He appears to have been convinced by the officials of the northern lines that these advances should be made, for unless

they were so advanced "there might be a change in the differential which would make it more burdensome to the West Virginia operators." That is to say, "unless the West Virginia lines increased their rates so as to spread the differentials there might be a reduction made on the other lines," and that would have been injurious to the West Virginia operators "because the reduction from the Pittsburgh district to the lakes would be more than the increase from the West Virginia districts to the lakes."

The record discloses that these four originating carriers, the Baltimore & Ohio, Kanawha & Michigan, Chesapeake & Ohio, and Norfolk & Western, did not have in contemplation the increase of their rates from the West Virginia fields to the lakes when at the spring meeting of 1909 of the traffic officials the protest was made from Pittsburgh and Ohio miners against the relation in rates existing between their fields and those south of them. They claimed that there was an encroachment made upon traffic which naturally should be theirs in greater part; that the rates charged them for the shorter haul to the lakes were relatively too high. They were not insistent upon the rates being lowered provided the rates of their competitors were increased. The southern carriers in conference with the northern lines were unwilling to concede to this demand at first, but later some of them became convinced that unless a new adjustment was effected a rate war would be brought about—at least that the northern lines would decrease their rates to such an extent as to materially injure the West Virginia traffic. Who proposed that increase is not known, but it was agreed upon by all of the carriers, both northern and southern, although some of the southern carriers manifestly made the increase unwillingly. And this leads to the suggestion introduced by the interveners in this case, that the Norfolk & Western did not act of its own motion in this matter, but was dominated by the Pennsylvania Railroad Company, which, on January 14, 1910, with its affiliated companies, held 51.55 per cent of the stock of the Norfolk & Western—458,833 out of a total 890,000 shares. On June 4, 1910, the outstanding stock was increased to a total of 918,150 shares. The percentage held by the Pennsylvania companies was thus reduced to 49.97 per cent. There is no doubt, therefore, but that the Pennsylvania Railroad Company could have dominated the Norfolk & Western in this matter, but the president of that road says that neither the Pennsylvania Railroad Company nor any of its officers influenced him in the establishment of the rate.

JUSTIFICATION GIVEN BY CARRIERS.

There are two fixed bases upon which to stand in the consideration of these rates: (1) The admission that it was not proposed at the meetings of the carriers to increase these rates because existing rates

were unreasonably low; (2) (and this is also admitted by the carriers) that the increases were not proposed and are not now justified upon the ground that the carriers were receiving from all traffic too small a return upon the reasonable value of the property used in rendering the service given.

What, then, are the defenses offered for the proposed increases? The Chesapeake & Ohio has presented the Commission with no brief nor availed itself of the opportunity to make oral argument before the Commission. At the hearing it placed upon the stand one witness, its general freight agent, who made no defense of the rates other than to say that the proposed increased rates were just and reasonable. This was the extent to which this carrier assumed the burden of convincing this Commission that the rates which it proposed conformed to the requirements of the law; and the reason that no fuller showing was made by this road may be explained, in part at least, by the fact that at the conference of railroad officials above referred to the president of the Chesapeake & Ohio said:

We never have and do not agree that there is any inequality in the rate adjustment, and have stated it very emphatically before the executives of the various roads.

The Baltimore & Ohio, aside from consideration of the relative adjustment between the Fairmont field and the Pittsburgh field, states its full case in support of the reasonableness of its proposed increased rates in these paragraphs:

It should be added that the proposed advanced rates involved in this proceeding from the various coal regions served by the Baltimore & Ohio Railroad to Lake Erie ports are clearly just and reasonable. Practically all coal affected by these advances moves from Fairmont. The proposed rate from Fairmont is \$1 per ton for an average haul of 248 miles to Lorain, the nearest lake port. This figure makes out a rate of 4.03 mills per ton per mile, a low rate for a haul of that distance. This is also true of the proposed rates from the other groups.

The reasonableness of these rates is further illustrated by comparing them with the rates on commercial coal other than lake cargo coal from the same points of origin to the same destinations. These track delivery rates are the normal coal rates from the various regions, the lake coal rates representing reductions below these normal rates to meet competitive conditions at the head of the Great Lakes which are not applicable to the rates for track-delivery coal. The rate from the Fairmont and Belington groups to a group including Fairport, Cleveland, and Lorain is \$1.15 per ton (B. & O., C. & C.-I. C. C. No. 705), or 15 per cent higher than the proposed lake rate. The same tariff shows a rate of \$1.25 per ton from the same points of origin to a group including Sandusky, or 25 per cent higher than the proposed lake rate.

The proof which the Kanawha & Michigan presents as justifying their increased rates is summarized in that carrier's brief as follows:

Mr. Youse, in his testimony, made three comparisons.

1. Comparison with the average proportional rate on coal billed via Toledo for shipment beyond.

He showed (Record, p. 1179) that the average proportional charge from West Virginia mines on the line of the Kanawha & Michigan Railway to Toledo, Ohio, on coal destined beyond, including all-rail and rail-and-lake routes, is \$1.10 per ton, yielding 3.37 mills per ton per mile, as compared with the advanced rate of \$1.06½, yielding 3.2 mills per ton per mile.

2. Comparison with similar "lake" rates.

In his K. & M. Exhibit No. 3 he showed that the advanced rate was a reasonable one when compared with other "lake" rates from various competitive fields. (Record, p. 1178.)

3. Comparison with the local rate to the port.

His testimony shows the rate to Toledo on commercial coal used in Toledo to be \$1.25, as compared with \$1.06½, the proposed advanced rate. (Record, p. 1213.)

Our proportional rate to Toledo, \$1.10, and our rate on commercial coal, \$1.25, have been in force for many years and have never been questioned. So we presume they may be considered as just and reasonable rates. If so, how much more is the proposed rate, \$1.06½, a reasonable rate?

We are conservatively stating the fact when we say that the Baltimore & Ohio, the Chesapeake & Ohio, and the Kanawha & Michigan have made no serious effort to convince the Commission that these increased rates were reasonable. The Norfolk & Western, on the other hand, has made a full presentation of its case upon the theory of justification which it adopted. The law does not regard these carriers en masse. While the rates are put in at the same time and after conference with each other, is it sufficient in law for one of the carriers interested to assume exclusively this burden? We may not proceed upon this theory without doing violence to the law; certainly not where it is within our knowledge that the rates are made by understanding had between the carriers. For if this were to be the policy of the Commission and recognized by it as lawful, manifestly where several roads lead between two points, the carriers would place the burden of upholding the reasonableness of the rate upon that railroad which could make the best showing, having the longest route, most incompetent management, the lowest volume of traffic and the greatest need of additional revenue. As a practical matter, we attempt to take a broad survey of traffic conditions and to recognize the necessity for competition between carriers, but we may not say, as a matter of law, that a group of carriers can cast the responsibility of maintaining the burden of establishing the reasonableness of certain rates upon a single carrier and claim the benefit of whatever the case made by that carrier may establish. In this case we are not impressed with the thought that any such policy has been purposely pursued.

It is the fact, however, that the only carrier which seriously assumed the burden of sustaining these rates was that line having the longest haul from the mines to the port and probably carrying the lightest train loads. It is, however, one of the strongest of the roads

financially, for on this very Bluefield-Columbus division its gross revenue is over \$26,000 a mile, while the average of its system is but \$18,000 a mile. Moreover, we can not be indifferent to the fact that the roads which have shown no justification whatever for these increased rates are those interested only in the West Virginia fields, while the Norfolk & Western is controlled through an ownership of the majority of the stock by the Pennsylvania Railroad, which is interested in upholding the rates from the West Virginia fields for the protection of its rates upon the great volume of coal tonnage which it produces upon its own line. The Pennsylvania, through its interest in the Norfolk & Western, is interested not so much in securing high rates upon the West Virginia tonnage of that road, which amounts to but 1,700,000 tons; it is more vitally concerned in the protection of rates from the Ohio and Pittsburgh district, from which it hauls to the lake approximately 7,000,000 tons.

POSITION OF NORFOLK & WESTERN.

The president of the Norfolk & Western well epitomized his case in these words:

I want to advance these rates because they are unreasonably low and do not bear their part of the burden of the cost of operating the railway.

He disclaimed any intention to justify these rates upon the proposition that the Norfolk & Western was in need of additional revenue. He frankly recognized that his attitude at the earlier conferences was hostile to any change in the differential, claiming that the reasons which led to the change were matters of policy with which the Commission could not concern itself so long as the increased rates of themselves were just and reasonable. In this position, as a matter of law, the contention of the Norfolk & Western is sound. The fact that these rates were increased so as to effect a different differential, or so as to more equitably equalize rates between the Pittsburgh and the West Virginia fields, and that such increase was made without regard to consideration of the reasonableness of the resulting rates, may not be considered as conclusive or in anywise determinative as to the justness and reasonableness of the rates of themselves. As was pointed out in the *Western Advanced Rate case*, 20 I. C. C. 307, we are not concerned with the increase in the rates but with the increased rate. Nor are we concerned with the motives which led to that increase provided the rates which it is proposed to establish are reasonable. This Commission does not sit as a supreme traffic manager for the railroads of the country. Consideration of the policy which they may pursue is not a matter delegated to us so long as it does not infringe upon the prohibitions of the law.

It is not our function to equalize commercial conditions or to establish zones of trade or bring markets into competition one with another.

The law says that rates must be just and reasonable and that rates increased after January 1, 1910, must, if suspended by the Commission, be justified. Our minds must be satisfied by the facts presented that the requirement of the law is met in the increased rates. We therefore dismiss from consideration that large portion of the record dealing with the needs of the West Virginia shippers, the relation which the carriers have established between the Pittsburgh and the West Virginia fields, and the policies announced by the carriers which led them to make these rates. In so far as the West Virginia coal miner needs to rely upon the sympathy of his serving carrier or upon its policy with respect to the wisdom of making a low rate in order to secure his traffic or develop his mines or serve a distant territory, his appeal must be to such carrier and not to this Commission. The standards established by law which mark the jurisdiction of this body do not permit us to substitute our judgment as to the wisdom of a certain policy of rate making for that of the traffic officials of the railroads.

In saying this, however, regard must be had for those provisions of the law which expressly declare certain fundamental policies of regulation. There may not be discrimination between localities, it is said in section 3; and in section 4 this principle is extended so as to prohibit the farther point being given an undue advantage over that which is nearer to the point of origin. And so in section 1 is found a provision giving to this Commission jurisdiction over the classification of freight with respect to which rates, rules, regulations, and practices are made or obtain. This is a far-reaching power, essential to effective regulation, of which no comprehensive definition need now be given. It necessarily involves consideration of the value of service given to the shipper as well as the cost and value of the service furnished by the carrier.

COST OF TRANSPORTING COAL.

The Norfolk & Western seeks to establish the reasonableness of its proposed rates on lake-cargo coal upon this proposition, that such coal while paying all the transportation cost, its full share of maintenance and overhead charges, and all but \$13,000 of what it claims is its full share of interest upon bonded debt, does not meet the share properly allotable to it of dividend charges. How this is arrived at is to be found under the title "N. & W." of exhibit 10 in the appendix.

This road has for many years maintained a system similar to that which prevails upon the Santa Fe, of making a separation between passenger and freight traffic and allotting to each the separate and

Mills.

Mr. Coxe, of the Norfolk & Western, on basis of average cost of all freight traffic on Bluefield-Columbus division for fiscal year ending June 30, 1910.....	2. 28
Cost as figured by the examiners of the Commission.....	1. 688
Revised by Mr. Coxe, using method of the examiners of the Commission..	1. 983
Mr. Hillman's final revision.....	1. 8714
Mr. Rodgers, statistician of the Norfolk & Western, following Mr. Hillman's theory and using his basis of separating cost for the purpose of illustration.....	2. 04

Whichever method was followed, the figures resulting make it evident that it is not beyond the range of possibility to approximate the cost of carrying freight as distinguished from passengers over a certain division or even the carrying of a certain kind of freight when this constitutes a large proportion of a carrier's traffic over such division. Certainly for purposes of comparison such cost figures could be ascertained upon any road by the settling of a few questions by this Commission, or between the carriers themselves. The Norfolk & Western in its brief points out this fact, holding that the experts for the interveners have shown a cost per ton per mile of carrying coal upon the Pocahontas division to be 2.905 mills, while the railroad's expert found the average freight cost on the same division to be but 3.2 mills, and within these figures are included the cost of concentrating, all of which takes place both for east-bound and west-bound traffic in this division, and which approximates a million dollars per year. So, too, the experts for the coal companies estimate the cost on the Kenova and Sciota divisions to be 1.691 mills per ton per mile, while those for the railroad estimate the cost at 1.893 mills per ton per mile.

Estimated cost of hauling lake-cargo coal from mines to docks over the Bluefield-Columbus (Norfolk & Western) and Columbus-Sandusky (Pennsylvania Co.) lines, as shown by the various experts.

(For manner of constructing table see explanatory memorandum in Appendix, see page 629.)

Line.	Distance.	Estimated cost.		
		Basis.	Per ton.	Per ton-mile.
	<i>Miles.</i>		<i>Cents.</i>	<i>Mills.</i>
Bluefield-Columbus (Norfolk & Western).	300	Norfolk & Western.....	68. 40	2. 28
		Coal companies.....	56. 10	1. 87
		Commission's examiners.....	48. 21	1. 61
Columbus-Sandusky (Pennsylvania Co.).	111	Pennsylvania Co.....	31. 82	2. 87
		Coal companies.....	25. 97	2. 34
		Commission's examiners.....	27. 94	2. 53
Mines to docks.....	411	Railway companies.....	100. 22	2. 44
		Coal companies.....	82. 07	2. 00
		Commission's examiners.....	76. 15	1. 85

No nearer or more precise statement is justified from the estimates than have been made than that it costs about 2 mills to move a ton

2-2 I. C. C. Rep.

of coal 1 mile (including gathering and cost of moving empty cars) upon the Norfolk & Western between Bluefield and Columbus.

RETURN ON INVESTMENT.

Having ascertained by their own methods the cost of hauling this lake coal, these experts undertook to apportion to this traffic its proper share of interest, taxes, and dividends. What was the value of the property used as to this particular traffic? Upon this there was again difference of theory. The book cost of the system was the generally accepted basis. But while the books revealed the total book cost of the system (\$130,000 per mile of main line) they did not disclose the actual cost of this portion of the road. Thus developed several theories of apportioning such cost. The railroad contended for a composite figure which so nearly approximated the ton-miles of this portion of the system to the ton-miles of the whole system that this figure was taken as expressing the value of the line from Bluefield to Columbus, and this was 48 per cent. Thus, while the system is 1,542 miles in length (main line) the Bluefield-Columbus line of 346 miles (main line) was credited with 48 per cent of the value of the whole because of the density of its traffic. There is no doubt but that this portion of the road is the very heart of the system, and it has probably been more expensive to build than any other portion. The branch lines on this section constitute 56 per cent of the total branch lines of the system, 395 miles. The second track on the Bluefield-Columbus line is 59 per cent of the system's second track of 348 miles; and the sidings are 47 per cent of the system's sidings of 996 miles. Thus is made up a track mileage, Bluefield-Columbus, which is 38 per cent of the total all-track system mileage of 3,283 miles. (See Appendix, Exhibit 6.) Other experts thought it unfair to balance all sidings, branches, and second tracks against main-line mileage, so they credited the Bluefield-Columbus line with 34 per cent of the total cost of the system, the figure arrived at by adding main-line, second-track, and branch-line mileage alone. Thus something less than one-fourth of the main-line mileage was estimated as worth slightly more than one-third of the value of the system.

As above stated, it may be said, as a generalization, that the hauling of a ton of coal over the Bluefield-Columbus line 1 mile costs in the neighborhood of 2 mills, and if this coal, on a tonnage basis, is to bear its full percentage of the taxes, interest, and dividends distributable to all freight upon this line an additional 1 mill should be allowed under the 48-per-cent division of cost of the Norfolk & Western, but about .75 of a mill on the 34-per-cent basis. Such an allowance for fixed charges and dividends places on this lake-cargo coal its full percentage of such costs allotable

to all freight and disregards the value of the commodity hauled (for, while 60 per cent of the tonnage on this line is coal, it is estimated to represent but 3.45 per cent of the value of the traffic hauled), and the fact that this rate is made as a portion of a through rate upon traffic moving over the lakes and farther into the northwest by rail, and is therefore analogous to a division of rate. It is commonly said that two-thirds of a railroad's revenue goes for operating and maintenance expenses and the other third for return upon plant. The figures here obtained—2 mills for operating and maintenance and 1 mill for revenue—show how nearly this is correct, although in the case of the Norfolk & Western its freight-operating ratio is lower than the average, being but 54.72 for the Bluefield-Columbus division for 1910 and 59.61 in 1911 (as shown in Appendix, Table No. 8), the all-system ratio in 1910 being 58.54.

WHAT SHOULD THIS TRAFFIC BEAR?

We meet in this case the interesting question which for the first time is presented to the Commission—the right of a carrier to increase its rates upon a large volume of traffic solely because such traffic does not bear a certain proportionate share of the return which the carriers make upon their stock. It is to be noted, (1) that there is no claim that the carrier under present rates does not receive full return upon the value of its property, (2) if the proposed rates go into effect and the present volume of traffic to the lakes is maintained the return at present received will be much increased, (3) the carrier does not propose to reduce its rates upon any coal or other commodity, and (4) it would appear to follow that whenever a carrier finds that it is carrying traffic which does not yield its proportionate share of fixed charges and dividends as it may always do as long as freight is classified it may increase the rates on such traffic up to the point where all traffic, and this means each particular kind of traffic, yields the same net return above cost of its movement to the carrier.

This contention, however, the president of the Norfolk & Western disavows. Being asked, "Do you think that if the average cost of doing all the business on a railroad is taken into consideration, and it is shown that any class of business like the coal business is paying something less than that average cost or only slightly more, it would follow that those rates are too low?" he replied, "I think this, that when the individual commodity and rate are taken, and it is demonstrated that over a certain section of the line on which that particular commodity is transported under identically the same conditions, the same plant is employed, with a condition that prevails as it does in this particular instance absolutely alike for a large percentage of the tonnage handled over a particular part of the railroad,

as we are undertaking to show here, I believe that the principle that I have enunciated is a correct one and that the business of this company can be done in that way without injury to any of the interests. I do not mean to carry out this principle on every kind of traffic over every line of road, but I am trying to show that here is a case where it can be done, and it is the only equitable basis on which this rate ought to be made." Counsel for the Norfolk & Western, in their brief, comment upon his statement as follows: "Thus Mr. Johnson is not contending that over an entire railroad system on the numerous and varied classes of traffic and commodities the basis which he has mentioned should apply. On this particular division, however, he compares lake-coal traffic with similar traffic and finds that what his company receives from the lake rates is very much less than on any other classes of its coal traffic or on any other similar commodities. Again, Mr. Johnson states that he does not contend as an abstract proposition, applied to an entire system, that no class of traffic can under any circumstances be carried for less than its full share of the cost of operating and maintaining the railroad, but he does contend that where a comparison is made of lake coal with the other coal traffic, and it is discovered that the lake coal returns a very much smaller revenue than the other coal traffic, this is a material matter and one which justifies an advance in the lake rates."

Let us give consideration to this last-stated proposition—that lake-cargo coal returns a very much smaller revenue than the other coal traffic of the Norfolk & Western—and then pass to the question whether a rate may be reasonable which does not cast upon a certain class of traffic its full share of the carrier's financial burden.

According to the figures furnished by the Norfolk & Western, the cost of carrying all freight over the Bluefield-Columbus line is 2.28 mills per ton per mile. This is lower than the average cost of carrying *all freight* over the balance of the system, for this is stated by the carrier to be 2.95 mills. We have then as cost these two figures, 2.28 mills for the Bluefield-Columbus coal, including lake coal, and 2.95 mills for all other coal, assuming that the cost of carrying coal on all other portions of the line equals the cost of carrying all freight on all other portions of the line, which is the assumption that the carrier has proceeded upon as to the Bluefield-Columbus line.

We now pass to *all coal* excepting the coal carried over the Bluefield-Columbus line. This yields a revenue of 3.51 mills per ton-mile, and costs, we have assumed, to transport it 2.95 mills. Therefore all coal (coal carried short distances or into exclusive noncompetitive territory or in single carloads and switched to industries, as well as that transshipped by ocean) costs 84 per cent of its revenue, while lake-cargo coal costs 82.6 per cent of its revenue. Thus the Norfolk & Western receives as a profit, over and above costs,

17.4 per cent on lake-cargo coal, Bluefield to Columbus, while on all coal over the balance of the system it receives only 16 per cent above cost. (For these figures see Appendix, Table 3.)

The carrier shows also that the earnings per ton-mile on coal from the Pocahontas field eastward to the Atlantic seaboard for shipment beyond the port for 1910 was 3.187 mills. It also shows that the cost per ton-mile of all freight on the line from Bluefield to Norfolk over which this coal moves was 2.136 mills, thus showing that the ratio of this cost to the revenue is 67.02 per cent as compared with 82.6 per cent on the lake-cargo coal. However, it must be borne in mind that the cost, Bluefield to Norfolk, of 2.136 does not include any of the extraordinary cost of concentrating the coal which passes over this division. That entire cost of concentration is borne in the Pocahontas division on the Bluefield-Columbus line, the entire expense thereof thus being made a charge upon the coal between Bluefield and Columbus. To make a fair comparison of cost revenue on coal destined to Norfolk, on the one hand, and that destined to Sandusky on the other, it becomes necessary to add to the cost of all freight, Bluefield to Norfolk (2.136 mills), a proper charge for concentrating coal, which is estimated from figures furnished by the carrier to be .414, approximately four-tenths of a mill per ton per mile, thus making the total cost of the coal, Bluefield to Norfolk, 2.55 mills, which is 80.01 per cent of the revenue of 3.187 mills, approximately the same ratio of cost to revenue as on the lake-cargo coal (82.6).

Another way of comparing the ratio of all freight cost to revenue of the coal destined beyond the capes from Bluefield to Norfolk with the coal destined beyond Sandusky, between Bluefield and Columbus, is to contrast the cost of all freight, Bluefield to Norfolk (2.136 mills) with the main-line cost of all freight from Bluefield to Columbus (1.939 mills). Between Bluefield and Norfolk this main-line cost is 67.02 per cent of the "beyond-the-capes" revenue of 3.187 mills, while the main-line cost, Bluefield to Columbus, is 70 per cent of the lake-cargo revenue of 2.76 mills.

CAR EARNINGS AND TRAIN EARNINGS.

By way of illustrating the revenue received by this carrier from the transportation of coal with that received from the transportation of other commodities, the Commission asked the Norfolk & Western to furnish it with the earnings received from a train of 35 cars of through merchandise from Norfolk to Columbus and another from Norfolk to Bristol. (See tables 4 and 5 of the appendix.)

From these figures it would appear that for the haul from Norfolk to Columbus, 707 miles, the Norfolk & Western receives less per car-mile for transporting sugar, ammunition, canned goods, or even dry

goods than it does for transporting coal over the Bluefield-Columbus line, 330 miles. While the average earnings per car-mile from Norfolk to Bristol, 408 miles, on a train of 35 cars, consisting of 5 cars of sugar, 1 of potatoes, 1 of hides, 1 of ammunition, and the remainder of general merchandise, were 7.92 cents, the average revenue on lake coal, Bluefield to Columbus, 330 miles, was 10.58 cents. The earnings averaged per train-mile on the train of merchandise \$2.77, and on the train of 35 cars of coal \$3.02. The 35-car train from Norfolk to Columbus, 707 miles, of general merchandise yielded earnings of \$1,237.70, while the same number of cars of lake coal from Bluefield to Columbus, 330 miles, yielded \$1,222.76. The train of 35 cars of merchandise from Norfolk to Bristol, 408 miles, brought earnings of \$1,132.16, while the same number of cars of lake-cargo coal from Bluefield to Columbus, 330 miles, earn \$1,222.76. Thus we discover that, while the rate per ton per mile on the carriage of lake-cargo coal appears extremely low, the real earnings of the car or the train compare most favorably with the earnings upon the highest class of freight which the railroad carries, as here shown:

Route.	Commodity.	Distance.	Revenue.			
			Per train.	Per train-mile.	Per car-mile.	Per ton-mile.
Norfolk to Columbus.....	Merchandise	707	\$1,237.70	\$1.75	Cents. 5.00	Mills. 4.23
Norfolk to Bristol.....	do	408	1,132.16	2.77	7.92	9.67
Poahontas to Columbus.....	Coal (lake)...	330	1,222.76	3.02	10.58	2.41

There could be no better illustration than this of the fallacy of placing reliance upon ton-mile earnings as a basis of rate-making. As the Commission has heretofore found in many cases a much fairer basis is that found in the earnings per car-mile and per train-mile. Much of the profitable freight carried by the railroads of the United States, and perhaps this might be made broader and it could be truthfully said that most of the freight which pays the carriers the best is that which yields the lowest rate per ton-mile. This arises out of many facts which the traffic manager takes into consideration, the volume of the traffic, the heavy load per car, and the regularity of movement. Some of the roads here concerned are among the most prosperous in the country, and yet their rate per ton-mile is lower than that of many which enjoy no such prosperity. It is shown that the earnings per car-mile of coal and other freight earnings on the Chesapeake & Ohio, Norfolk & Western, and Kanawha & Michigan railways are as follows:

Earnings per car-mile.

Company.	Coal.	Other freight.
	Cents.	Cents.
Chesapeake & Ohio.....	14.00	9.84
Norfolk & Western	14.93	11.72
Kanawha & Michigan.....	16.62	14.49

This thought is still further emphasized by consideration of these figures showing what the Norfolk & Western receives on its lake-cargo coal at the low rates obtaining per train-mile and per train, and contrasting these with the average earnings on the whole system and with those on the Pennsylvania system and on all roads in the United States.

	Freight revenue.		Passenger revenue.	
	Per train-mile.	Per train traveling 300 miles.	Per train-mile.	Per train traveling 300 miles.
Lake-cargo coal—Pocahontas to Columbus (estimated on basis of average trainload of 2,000 tons, at rate of 79½ cents per ton for the distance, this being the Norfolk & Western division of through rate).....	\$5.30	\$1,590		
Norfolk & Western system, 1910.....	2.84	852	\$1.19	\$357
Pennsylvania Co. system, 1910.....	3.01	903	1.29	387
United States, 1910.....	2.86	858	1.30	390

How illusive ton-mile figures are has been well shown in this case, for it was the Norfolk & Western's attempt originally to justify its proposed rates in this case by showing that all they asked was a rate yielding 2.75 mills per ton-mile, and upon this basis they presented elaborate exhibits. Later, however, it was shown that by an error in the computation of their mileage they were seeking to establish a rate of 2.99 mills per ton-mile, and the same computations were used to sustain this increased ton-mile rate. They were, in fact, earning a higher rate per ton-mile (2.76) than they originally sought to justify before the Commission. The president of the road gave all his testimony under the belief that the road was earning but 2.54 mills per ton per mile on this traffic, while in fact it was earning 2.76. Under this misapprehension his contention was that this coal yielded too slight a proportion of the funds necessary for the payment of interest and dividends, the difference between 2.28 mills and 2.54. Under his figures the traffic yielded but 0.26 mill over the cost of transporting all freight. The fact, however, now appears that the yield applied to interest and dividends was 0.48 of a mill—nearly 100 per cent more of profit above cost than he had supposed when giving his testimony.

Norfolk & Western system, because the rates on lake-cargo coal are lower than the rates upon other coal and other traffic. The assumption being that the cost of carrying this coal is the same as the cost of carrying all freight, it follows that the commodity carrying the lower rate does not contribute as largely to the full expenses and profits of the railroad as the commodity carrying the higher rate.

Is a rate unreasonable because it does not pay its full share of taxes, fixed charges, and dividends? At the end this is the question to which we come in this case. The carriers themselves having fixed these rates under the mandate of the law that they shall fix just and reasonable rates, have they justified higher rates by showing that the existing rates which they had fixed fall somewhat short of meeting all the related expenses which the carrier must bear, not only for transportation but to secure an adequate return upon its property? Let us see where this doctrine would lead. If a carrier may raise all rates to a basis where each will bear its share of cost, including all costs, and no lower rate is reasonable, then it must follow that all rates are unreasonable which yield to the carrier a greater return than such cost. Under such theory what would be the rate on tea or silks, or high-priced horses, or delicate machines? Is there to be no classification of freight excepting upon the basis of cost of transportation plus insurance risk? If so the tariffs of every railroad in the United States must suffer a revolutionary change. In all classification consideration must be given to what may be termed public policy, the advantage to the community of having some kinds of freight carried at a less rate than other kinds. And this is the true meaning of the phrase "what the traffic will bear." It expresses the consideration that must be shown by the traffic manager to the need of the people for certain commodities. He accordingly imposes a higher rate upon what may be termed luxuries as compared with that imposed upon those articles for which there is a more universal demand. He also gives consideration to the fact that the rate so imposed enters into the ultimate price to the consumer to but a small degree when the article is one of high value, and that those in the community who can afford to purchase such articles can well afford to pay a rate greater than that which could reasonably be imposed upon the general public for commodities of common use. In this sense what the traffic will bear and the value of the service are analogous. No one would claim that a carrier was violating its duty under the law in charging three times the rate upon oriental rugs that it imposed upon cotton. This would not be undue discrimination as between commodities, even though it costs no more to transport the rugs than it did the cotton, assuming both to be carried at the owner's risk, for the one does not compete with the other, and one may reasonably bear a higher rate than the other upon public grounds. It must be, therefore, that this Commission, under the amendment to section 1 passed by Congress in 1910, giving to us the control of freight classification, has power to

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determine the reasonableness of the differences that are made between the rates made applicable to the various kinds of commodities transported. We may not say that a rate shall be fixed so as to meet the requirements or needs of any body of shippers in their efforts to reach a given market, nor may we establish rates upon any articles so low that they will not return out-of-pocket cost. Neither could we fix an entire schedule of rates which would yield an inadequate return upon the fair value of the property used in the service given. There is, however, a zone within which we may properly exercise "the flexible limit of judgment which belongs to the power to fix rates." These are the words of the Chief Justice of the Supreme Court, 206 U. S., 26. There is no flexible limit of judgment if all rates must be upon a level of cost, and out of every dollar paid to the carrier must come a fixed amount of return for capital invested. The recognition of such a doctrine has never been suggested either by Congress or the Supreme Court. A just and reasonable rate must be one which respects alike the carriers' deserts and the character of the traffic. It can not be a rate that takes from the carrier a profit and thus favors the shipper at the carrier's expense, nor is it one which compels the shipper to yield for the transportation given a sum disproportionate either to the service given by the carrier or to the service rendered to the shipper. The words "just and reasonable" imply the application of good judgment and fairness, of common sense and a sense of justice to a given condition of facts. They are not fixed, unalterable, mathematical terms. Their meaning implies the exercise of judgment, and against the improper exercise of that judgment the Constitution gives protection, at least as far as the carriers are concerned.

CONCLUSION.

As to the Chesapeake & Ohio, the Kanawha & Michigan, and the Baltimore & Ohio no showing has been made by these carriers which justifies us in the holding that the increased rates are just and reasonable. This was not a case in which one carrier could or did make a showing for all of the carriers in the territory affected. Each undertook its own justification of the rates, and with the exception of the Norfolk & Western such justification as was attempted was not only nonpersuasive but almost negligible. The presumption of the law is that the rates in effect on January 1, 1910, were just and reasonable and may not be increased without satisfactory defense being made before the Commission. It will be held, therefore, that these three carriers may not impose upon the traffic concerned higher rates than those in effect on January 1, 1910.

As to the Norfolk & Western we are persuaded that the imposition of the increased rates here involved will not impose an unjust and unreasonable charge for the transportation service involved. In arriving at this conclusion we are not unmindful of the fact that

these rates may deprive the shippers of lake-cargo coal from the Pocahontas and Thacker fields along the line of the Norfolk & Western of their present market; but this is a matter with which we may not largely concern ourselves. It is not the duty of a carrier to place all of its shippers in a position to meet the markets which they may desire to supply. The rate made by the carrier must be just and reasonable for the service which it gives and should have relation to the cost of that service and the character of the commodity transported. It is conclusively shown that lake-cargo coal pays the full cost of its transportation, of all operating expenses, and leaves a considerable margin applicable to interest and dividends. We can not say that it yields sufficient to pay all the share of dividends which might properly be applicable to this traffic, and certainly it does not furnish any fund from which additions and betterments or surplus could be provided. We are of the opinion that a definite and uniform allotment of funds from the charge imposed for the movement of each character of traffic to provide for interest, dividends, and surplus is not proper or justifiable, for the plain reason that it entirely abrogates all classification. This carrier, however, is largely a coal and coke road, and it may properly withdraw from the lake-cargo field if it is compelled to maintain rates lower than those which are just and reasonable to itself.

Furthermore, the Commission is conscious that there is a considerable zone within which a rate may be held to be just and reasonable, and we are not inclined in this case to hold the carrier down to the minimum which would be permitted by the record, and certainly the increased rates do not exceed the maximum figure which might properly be fixed for this traffic. Under the old rates the other carriers defendant appear to be now receiving a larger per ton-mile return than the Norfolk & Western for the service which they give, and the allowance of the proposed advanced rates will give to this carrier no more than some of its competitors receive.

A further consideration which moves us to permit these advanced rates is that we regard it as unfair to take from the carrier whatever of profit it may secure by reason of improvement in its plant and adoption of the most modern methods. If our railroad systems are to remain in private hands, stimulus must be given to the initiative and imagination of railroad operators. The community may not take with justice whatever comes by the labor or time saving devices adopted by those who serve the public, nor may the carriers absorb the profits of the shipper resulting from similar effort. This road is one of the most prosperous in the country, and it is largely so because of the enterprise of its officials in developing a great business and in handling it in the most economical method. We can not say, therefore, that a rate yielding on the average a fraction less than 3 mills per ton a mile is unjust and unreasonable.

An order will be drafted in accordance with these conclusions.

APPENDIX.

TABLE NO. 1.

Rates on coal and average rate per ton-mile (ton of 2,000 pounds).

From—	To—	Routes, etc.	Distance.	Lake coal (transhipped).				Commercial coal (local).	
				Present rate.		Proposed rate.		Rate.	Average rate per ton per mile.
				Rate.	Average rate per ton per mile.	Rate.	Average rate per ton per mile.		
Baltimore & Ohio:			Miles.			Miles.		Miles.	
Gauley, W. Va.	Locain, O.		376	\$1.14	8.13	\$1.21	3.29	\$1.15	3.12
Bellington, W. Va.	do.....		288	.98	3.34	1.05	2.86	1.15	3.08
Roaring Creek (C. & C.)	do.....		376	.98	3.14	1.04	2.45	1.15	3.73
Bower, W. Va. (C. & C.)	do.....		388	.98	3.08	1.05	2.28	1.15	3.12
Fairmont, W. Va.	do.....		236	.94	4.88	1.00	4.32	1.15	4.67
Fairmont district.	do.....		344	.94	3.80	1.00	4.02	1.15	4.67
Clarksburg, W. Va.	do.....		264	.94	3.62	1.00	2.73	1.15	4.28
Chesapeake & Ohio:									
			226	.97	3.94	1.04	2.74	1.25	3.01
Handley, W. Va. (Kanawha district).	Toledo, O.		447	.97	3.17	1.04	2.38	1.25	2.79
Thurmond, W. Va. (New River district).	do.....		344	1.13	3.00	1.21	2.31	1.45	3.06
			486	1.13	2.50	1.21	2.48	1.45	2.88
Norfolk & Western:									
Pocahontas district.	Sandusky O.		417	1.13	2.80	1.21	2.04	1.45	3.43
Tug River district.	do.....		385	1.13	3.01	1.21	2.15	1.45	2.79
Thacker district.	do.....		344	.97	3.53	1.04	2.68	1.25	2.60
Kenova district.	do.....		326	.97	3.97	1.04	2.28	1.25	2.60
Kanawha & Michigan:									
Thurmond, W. Va. (New River district).	Toledo...		344	1.13	3.00	1.21	2.28	1.45	3.06
Kanawha district.	do.....		332	.97	2.80	1.04	2.28	1.25	3.38

TABLE NO. 1—Continued.

Rates on coal and average rate per ton-mile (ton of 2,000 pounds).

¹ Ton, 2,240 pounds.

TABLE NO. 2.

Statement showing percentage of Lake coal shipped from Pittsburgh, Pa., Ohio, and West Virginia districts each year from 1900 to 1911, inclusive.

¹ 1911 only included up to Nov. 30.

TABLE NO. 3.

Line of road.	All freight, cost per ton-mile.	Revenue per ton-mile.	Ratio of all freight cost to revenue.	All coal.	
				Revenue per ton-mile.	Ratio of all freight cost to revenue.
	Mills.	Mills. (Lake cargo coal.) (Beyond the cape.)	Per cent.	Mills.	Per cent.
Bluefield to Columbus.....	2 28	2 76	82 6	3 26	70 0
All system except Bluefield to Columbus.....	2 95	3 187	92 6	3 51	84 0
System.....	2 63	4 47	58 54	3 30	77 6
Bluefield to Norfolk.....	2 136	3 187	67 02		
Bluefield to Norfolk, including allowance of 0.414 mill for concentrating cost.....	2 550	3 187	80 01		

TABLE NO. 4.

Norfolk & Western Railway Company train of 35 cars of merchandise from Norfolk, Va., to Columbus, Ohio (707 miles). I. & S. Docket No. 26.

Commodity.	Weight.	Earnings.			
		Per car.	Per car-mile.	Per ton per mile.	Per train mile.
	Pounds.		Cents.	Mills.	
Ammunition.....	40,914	861.38	8.08	4.25	
Cd. soup.....	36,400	31.22	4.42	2.42	
Cd. beans.....	37,400	51.37	7.77	3.88	
Do.....	36,350	30.98	4.38	2.41	
Cd. goods.....	75,015	78.15	11.06	2.94	
Decr. cocoa.....	30,888	34.22	4.84	3.13	
Dry goods.....	22,630	46.27	6.54	5.78	
Do.....	12,635	22.57	3.19	5.06	
Machinery.....	43,600	17.64	2.50	1.02	
Merchandise.....	21,198	46.26	6.54	6.18	
Do.....	9,256	21.35	3.02	6.51	
Do.....	25,074	94.12	13.31	10.02	
Do.....	16,514	50.51	7.14	8.48	
Do.....	21,554	53.41	7.55	6.91	
Do.....	5,170	9.42	1.33	5.15	
Do.....	17,050	33.06	4.66	5.40	
Do.....	2,899	6.83	.97	6.78	
Do.....	2,005	4.38	.62	6.19	
Do.....	12,772	37.02	5.24	5.21	
Do.....	6,395	13.52	1.91	5.90	
Do.....	2,170	6.74	.95	5.79	
Do.....	10,002	29.85	4.22	5.44	
Do.....	5,009	12.19	1.72	6.86	
Do.....	11,663	26.67	3.63	6.31	
Do.....	9,410	17.26	2.44	5.19	
Quilts.....	4,240	10.81	1.53	7.2	
Spinach.....	20,000	30.00	7.07	7.67	
Sugar.....	40,400	42.81	6.06	2.90	
Do.....	40,400	42.81	6.06	2.90	
Do.....	37,557	40.10	5.67	2.90	
Do.....	34,466	35.55	5.08	2.61	
Do.....	34,667	32.13	4.54	2.35	
Do.....	31,341	31.81	4.50	2.00	
Do.....	42,657	40.38	5.71	2.67	
Tea.....	30,703	75.91	10.74	6.90	
Total.....	946,328	1,237.70	15.00	14.23	81.76
Average revenue on coal, Pocahontas to Columbus, 330 miles.....			10.88	2.41	2.00

¹ Average.

² 35-car coal train earns \$1,237.70.

TABLE NO. 5.

Norfolk & Western Railway Company train of 35 cars of merchandise from Norfolk to Bristol, Va. (408 miles). I. & S. Docket 26.

Commodity.	Weight.	Earnings.			
		Per car.	Per car-mile.	Per ton per mile.	Per train-mile.
	<i>Pounds.</i>		<i>Cents.</i>	<i>Mills.</i>	
Ammunition.....	30,520	\$88. 49	21. 69	14. 21	.....
Hides.....	43,044	71. 88	17. 62	8. 18	.....
Merchandise.....	6,467	26. 06	6. 39	19. 78	.....
Do.....	7,714	24. 76	6. 07	15. 77	.....
Do.....	8,586	28. 04	6. 87	16. 01	.....
Do.....	7,900	19. 96	4. 89	12. 38	.....
Do.....	7,064	24. 21	5. 93	16. 79	.....
Do.....	11,370	32. 54	7. 98	14. 05	.....
Do.....	4,955	16. 13	3. 95	15. 90	.....
Do.....	4,881	18. 64	4. 57	18. 73	.....
Do.....	15,419	36. 80	9. 02	11. 71	.....
Do.....	17,230	40. 83	10. 01	11. 62	.....
Do.....	5,997	17. 54	4. 30	14. 33	.....
Do.....	18,580	57. 14	14. 00	15. 07	.....
Do.....	7,105	19. 46	4. 77	13. 43	.....
Do.....	14,033	33. 51	8. 21	11. 71	.....
Do.....	6,569	16. 70	4. 09	12. 47	.....
Do.....	17,273	64. 12	15. 72	18. 22	.....
Do.....	12,833	42. 96	10. 53	16. 41	.....
Do.....	9,171	18. 13	4. 44	9. 69	.....
Do.....	11,816	32. 97	8. 08	13. 67	.....
Do.....	12,872	36. 34	8. 91	13. 85	.....
Do.....	6,116	14. 14	3. 47	11. 37	.....
Do.....	2,571	5. 25	1. 29	10. 04	.....
Do.....	5,909	13. 19	3. 23	10. 95	.....
Do.....	12,532	27. 79	6. 81	10. 88	.....
Do.....	15,770	32. 53	7. 97	10. 11	.....
Do.....	8,180	20. 55	5. 04	12. 32	.....
Do.....	16,432	34. 88	8. 55	10. 42	.....
Potatoes.....	36,000	38. 22	9. 37	5. 20	.....
Sugar.....	38,745	34. 31	8. 41	4. 35	.....
Do.....	38,073	30. 07	7. 37	3. 87	.....
Do.....	37,799	35. 29	8. 65	4. 59	.....
Do.....	43,246	34. 15	8. 37	3. 87	.....
Do.....	31,631	44. 58	10. 93	\$6. 91	.....
Total.....	574,403	1,132. 16	¹ 7. 92	¹ 9. 67	\$2. 77
Average revenue on coal, Pocahontas to Columbus, 330 miles.....			10. 58	2. 41	3. 03

¹ Average.

² 35-car coal train earns \$1,222.76.

EXPLANATORY MEMORANDUM TO ESTIMATED COSTS STATEMENT.
(See p. 615.)

Bluefield-Columbus.—The cost per ton for the Norfolk & Western was reached by multiplying the distance of 300 miles by the average cost per ton-mile (2.28 mills), as testified to by the carrier.

The cost per ton as estimated by the Coal Companies (56.10 cents) was reached by multiplying the distance of 300 miles by 1.87 mills per ton-mile, as arrived at by Mr. Hillman (see p. 101 of his brief).

The cost of 48.21 cents per ton, as shown for the Commission's examiners, was taken from the exhibit in table 15, on page 41 of the Lyon brief, and includes the 6-cent estimated cost of assembling in the Pocahontas district.

Columbus-Sandusky.—The cost per ton (31.82 cents), as shown for the 111-mile haul over the line of the Pennsylvania Company, was reached as follows:

The Commission's examiners found the average load per car to be 43.69 tons on this line, and in Pennsylvania Exhibit No. 15 it is shown that it cost \$417.04 to haul a train of 30 cars from Columbus to Sandusky and return the empties. This figures 31.82 cents per ton for the haul, or an average of 3.87 mills per ton-mile.

The cost per ton of 25.97 cents for the Coal Companies was reached by multiplying the distance by 2.34 mills, which is shown as the average cost per ton-mile in the Hillman brief (p. 192).

The cost of 27.94 cents per ton, as shown for the Commission's examiners, was taken from the exhibit in table 15, on page 41 of the Lyon brief, and includes the 6 cents estimated for switching movement at Columbus and Sandusky.

Mines to docks.—The figures for this section were reached by combining those in the two preceding sections on a mileage basis.

EXTRACT FROM BRIEF BY ATTORNEY FOR THE COMMISSION.

In order to sustain the position that the revenues from lake coal were not sufficient to pay cost of carriage (including overhead charges) and its fair proportion of taxes, fixed charges, and dividends, after crediting its fair share of miscellaneous income, the comptroller of the Norfolk & Western submitted a series of exhibits, the results being finally consolidated in "Exhibit JWC No. 2" [printed below].

N. & W. EXHIBIT NO. 10.

[RECORD EXHIBIT JWC No. 2 (AS REVISED).]

Statement showing net income under existing rates from transportation of lake cargo coal and proportion of fixed charges.

[Norfolk & Western Railway Co.]

Proportion of freight plant allotted to lake cargo coal.....	\$7,905,383.57
Gross revenue on transportation of lake cargo coal under existing rates for year ended June 30, 1910, as per Exhibit JWC No. 4, revised....	947,051.60
Operating cost based upon the average cost of 2.28 mills of all freight traffic on the line Bluefield-Columbus: 343,275,179 ton-miles lake coal, 2.28 mills (as compared with entire system, 2.63 mills).....	782,667.41
Net operating revenue.....	164,384.28
Less proportion of taxes of the line in West Virginia and Ohio, and including United States excise tax: \$385,479.89 ÷ 86.6 per cent × 9.898 per cent (see exhibit JWC No. 6, revised).....	33,042.06
	131,342.22
Add miscellaneous income (Exhibit JWC No. 7).....	46,748.04
Net income applicable to payment of fixed charges.....	178,090.26
Fixed charges, i. e., interest on funded debt.....	191,776.79
Deficit in net income under present rates to meet proportion of interest charges.....	13,686.53

Results on basis of proposed rates:

Under the proposed rates the gross revenue from transportation would be.....	\$1, 027, 555. 24
Under existing rates it was (see Exhibit JWC No. 4).....	947, 051. 69
	<hr/>
	80, 503. 55
The net income under existing rates was.....	178, 090. 26
	<hr/>
Net income under proposed rates.....	258, 593. 81
Fixed charges, i. e., interest on funded debt.....	191, 776. 79
	<hr/>
Surplus after providing for fixed charges under proposed rates.....	66, 817. 02

To determine the above it was necessary for the company to first ascertain the cost of moving lake coal. The company, by divisions, keeps its freight and passenger expenses separate. The line from Bluefield to Columbus constitutes three divisions—the first, known as the Pocahontas, extending from Bluefield to Williamson; the second, as the Kenova, from Williamson to Kenova Bridge (Ohio River); the third, as the Scioto, from the Ohio River to Columbus.

Coxe's Exhibit No. 5 is a compilation from these records showing the cost on the three divisions for the year ended June 30, 1910, to be 2.28 mills per ton-mile for *all* freight. The comptroller and president of the company testified that, owing to the fact that of all the ton-miles between Bluefield and Columbus about 20 per cent only was merchandise, about 20 per cent coke, and about 60 per cent coal, and the further fact that the coal and coke have to be concentrated at great expense, it was a fair assumption that the average cost of moving coal and coke was 2.28 mills. Therefore, to ascertain the expense of moving the lake coal, 2.28 mills was multiplied by the number of ton-miles of lake coal, producing \$782,667.41.

In order to determine what part of the fixed charges and dividends should be apportioned to lake coal, it was necessary for the company to form some basis of division of cost of road and equipment between the line Bluefield to Columbus and the balance of the system and apportion the fixed charges and dividends accordingly. The method pursued by the Norfolk & Western was, first, to divide the entire cost of property and equipment between passenger and freight on the basis of a composite per cent of 17 and 83, respectively, reached by averaging the ratios of passenger and freight, gross income, operating expenses, engine-miles, and car-miles per engine-mile. After thus determining the freight plant investment of the system, that was divided as between the Bluefield-Columbus line and the balance of the system on the basis of a composite of 48 per cent, Bluefield to Columbus, 52 per cent balance of system. The composite of 48 was based on the ratios of the freight-car mileage, freight-engine mileage, and freight-car miles per engine-mile, and it so happens that, while this composite was 47.3, the ton-miles of the Bluefield-Columbus line was 48 per cent of the total of the system, and this 48 per cent was

used wherever applicable. After thus determining the freight-plant investment applicable to the Bluefield-Columbus line, the Norfolk & Western apportioned to the lake coal on the basis of the freight-car miles of lake coal to the total car-miles, Bluefield to Columbus, which was 9.898 per cent.

DEFICIENCY OF REVENUE FROM LAKE-CARGO COAL.

In the original exhibit filed by Mr. Coxe (see exhibit No. 10), the apportionment of the estimated freight plant investment to the Bluefield-Columbus line was made on the basis of 48 per cent, that being the ratio of Bluefield-Columbus ton-miles to System ton-miles, while the composite ratio of the Bluefield-Columbus freight-car miles, freight-engine miles, and freight-car miles per engine mile to corresponding system figures was 47.3 per cent.

The basis for this apportionment as revised by the attorney for the commission is 34 per cent, which is the ratio of the mileage of main track (first and second) and branches to the total mileage of the system for such classes. The above-mentioned 48 per cent was used in the Coxe exhibit in apportioning certain other of the items embraced in column (A) and the revised basis of 34 per cent has, therefore, been correspondingly applied in column (B) to complete the revision.

TABLE NO. 11.

Revision of Record Exhibit JWC No. 2 (as revised), "statement showing net income under existing rates from transportation of lake-cargo coal and proportion of fixed charges."

Item.	(A) Original figures. (Coxe.)	(B) Revised figures. (Attorney.)
(1) Proportion of freight plant allotted to lake cargo coal (Record Exhibit JWC., No. 3, revised): $\$200,478,740.93 \times 83 \text{ per cent} \times 48 \text{ per cent} \times 9.898 \text{ per cent.}$	\$7,905,383.56	.....
$\$200,478,740.93 \times 83 \text{ per cent} \times 34 \text{ per cent} \times 9.898 \text{ per cent.}$		\$5,899,803.47
(2) Gross revenue on transportation of lake cargo coal under existing rates for year ended June 30, 1910, as per Record Exhibit JWC., No. 4, revised	947,051.69	947,051.69
(3) Operating cost based upon the average cost of 2.28 mills of all freight traffic on the line Bluefield-Columbus: 343,275,179 ton-miles lake coal \times 2.28 mills. (As compared with entire system, 2.63 mills.)	782,667.41	782,667.41
(4) Less proportion of taxes of the line in West Virginia and Ohio, and including United States excise tax: $\$385,479.89 \times 86.6 \text{ per cent} \times 9.898 \text{ per cent.}$ (Record Exhibit JWC., No. 6, revised)	33,042.06	33,042.06
(5) Net.....	131,342.22	131,342.22

Item.	(A) Original figures. (Coxe.)	(B) Revised figures. (Attorney.)
(6) Add miscellaneous income (Record Exhibit JWC., No. 7, revised).....	\$46, 748. 04	\$33,907.23
(7) Net income applicable to payment of fixed charges.....	178, 090. 26	165,249.44
(8) Fixed charges, i. e., interest on funded debt (Record Exhibit JWC., No. 8, revised):		
\$4,863,280 × 83 per cent × 48 per cent × 9.898 per cent.....	191, 776. 79	.....
\$4,863,280 × 83 per cent × 34 per cent × 9.898 per cent.....		135,841.89
(9) Deficit in net income to meet proportion of interest charges.....	13, 686. 53	.....
(10) Net income available for disbursement as dividends, etc.....		29,407.55

If, in addition to the above figures in the Coxe exhibit an allowance be made for the proportion of dividends which lake cargo coal should earn, there would be added the following:

Item.	(A) Original figures. (Coxe.)	(B) Revised figures. (Attorney.)
(11) \$4,214,510×83 per cent×48 per cent×9.898 per cent	\$166, 193. 44	
\$4,214,510×83 per cent×34 per cent×9.898 per cent		\$117,720.35

Making the deficiency in income to meet the above-named charges.....	179, 879. 97	88,312.80
(12) If a further allowance be made for the proportion of additions and betterments which lake cargo coal should earn, there would be added to the deficiency just given the following (based on \$2,170,815, the average of such charges to income during the 10 years, 1901-1910):		
\$2,170,815×83 per cent×48 per cent×9.898 per cent.....	85, 603. 12	
\$2,170,815×83 per cent×34 per cent×9.898 per cent		60,635.54

Making the total deficiency of earnings from lake cargo coal (plus such traffic's proportion of miscellaneous income) to meet proportionate costs of operation taxes, fixed charges, dividends, and additions and betterments.....	265, 483. 09	148,948.34
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The use of 2.28 mills (in Coxe Exhibit No. 2, revised) as the average cost per ton-mile for concentrating and moving lake cargo coal on the Bluefield-Columbus line is questioned because the average is for the entire traffic over the line, and, therefore, does not allow for the relatively high cost of hauling merchandise on the main line,

due to average loading of 17.35 tons per car, and also for the relatively high cost of concentration and main-line haul of coke, due to average loading of 32.2 tons as against an average of 45.2 tons per car for coal. By eliminating these elements (see Table No. 12, following), it is found that the average cost of concentrating and moving all coal over the Bluefield-Columbus line is 2.21 mills per net (or revenue) ton-mile. Applying this average to the total ton-mileage of lake cargo coal (343,275,179), there is produced \$758,638.15 as the total operating cost for that coal, or \$24,029.26 less than shown in item 3 above.

If this reduced operating cost be inserted in column B for item (3), the following comparison would result for the items indicated:

(9*) Deficit in net income to meet proportion of interest charges.....	¹ \$13,686.53	
(10*) Net income available for disbursement as dividends, etc.....		\$53,436.81
(11*) Deficiency in meeting costs of operation, taxes, fixed charges, and dividends.....	¹ 179,879.97	¹ 64,283.54
(12*) Deficiency in meeting costs of operation, taxes, fixed charges, dividends, and additions and betterments.	¹ 265,483.09	¹ 124,919.06

To recapitulate briefly what is set forth in the above table, No. 11, it is pointed out that assigning to the Bluefield-Columbus line its proportion of cost of road and equipment on the basis of ton-miles and accepting as the cost of coal the average cost of all freight, 2.28 mills, as used by the carrier, indicates that the revenue derived from lake-cargo coal for the year ended June 30, 1910, paid its full proportion of operating expenses and all of its share of taxes and fixed charges except \$13,686.53.

If, however, the cost of road be determined on the basis of main line, second track, and branch line, the revenue from lake-cargo coal will have paid its full proportion of operating expenses, taxes, and fixed charges and leave \$29,407.55 applicable to dividends. If, in addition to this, the cost per ton-mile of moving coal (accepting 2.28 mills as the cost of all freight) be determined by allowing for its extra-heavy loading as compared with coke and other freight, the cost is determined to be 2.21 mills, and applying this to the ton-miles of lake-cargo coal hauled will show that the revenue derived from lake-cargo coal pays its full proportion of operating expenses, taxes, fixed charges, and \$53,436.81 toward a total dividend obligation of \$117,720.35.

¹ Deficit.

TABLE NO. 12.

Showing method of assigning operating costs on Bluefield-Columbus line to coal and other traffic.

[See explanatory memorandum below.]

Commodity and description of movement.	Ton-mileage.		Cost.		
	Net (or revenue).	Gross (including weight of car).	Amount.	Average per ton-mile.	
				Net (or revenue).	Gross (including weight of car).
	(A)	(B)	(C)	(D)	(E)
Coal:				<i>Mills.</i>	<i>Mills.</i>
1. Total both main line and total concentrating.....	1,885,748,823	2,720,150,957	\$4,170,217	2.211	1.533
2. Main-line train.....	1,458,518,470	2,103,880,622	2,470,193	1.694	1.174
3. Total concentrating.....			1,700,024	3.979	2.759
4. Train movement in concentrating.....	427,230,353	616,270,335	918,264	2.149	1.490
5. Excess in concentrating.....			781,760	1.830	1.269
6. Train movement from mouth of mine.....	1,885,748,823	2,720,150,957	3,388,457	1.797	1.246
7. "Excess" account of concentrating movement.....			781,760	.414	.287
Coke:					
8. Total both main line and total concentrating.....	697,417,146	1,130,595,498	1,585,382	2.273	1.402
9. Main-line train.....	596,998,018	967,804,239	1,136,311	1.903	1.174
10. Total concentrating.....			449,071	4.472	2.759
11. Train movement in concentrating.....	100,419,128	162,791,259	242,565	2.416	1.490
12. Excess in concentrating.....			206,506	2.066	1.269
13. Train movement from mouth of mine.....	697,417,146	1,130,595,498	1,378,876	1.977	1.220
14. "Excess" account of concentrating movement.....			206,506	.296	.182
Merchandise:					
15. Main-line train.....	642,159,974	1,382,402,010	1,623,096	2.528	1.174
All freight:					
16. Total both main line and total concentrating.....	3,225,325,943	5,233,148,465	7,378,605	2.288	1.410
17. Main-line train.....	2,697,676,462	4,454,086,871	5,229,600	1.939	1.174
18. Total concentrating.....	527,649,481	779,061,594	2,149,005	4.073	2.759

MEMORANDUM EXPLANATORY OF THE REVISION BY THE ATTORNEY FOR THE COMMISSION OF THE AVERAGE COST PER TON-MILE FOR HAULING COAL ON THE BLUEFIELD-COLUMBUS LINE OF THE NORFOLK & WESTERN RAILWAY AS SHOWN IN TABLE NO. 12 ON PAGE 30.

In the table above referred to and throughout this memorandum the term "Main-line movement" is intended to describe the regular train movement after concentration has taken place; the term "concentrating movement" has been used to describe the complete act of assembling coal and coke in trains, and therefore in the matter of cost includes the cost resulting from the regular train movement as well as the so-called "Excess" cost in concentration; the term "Merchandise" has been used to describe all tonnage other than coal and coke.

Column A.—Data in this column for items 1, 8, 15, and 16 were secured from Cox's Exhibit No. 1; for items 3, 10, and 18 from letters of May 16 and 29, 1911, from Mr. Cox; and items 2, 9, and 17 were obtained by subtraction.

Column B.—In a letter dated October 7, 1911, Mr. Cox stated that the average lading ("east and west bound") for the year 1910 was 45.2 tons per car for coal and 32.2 tons per car for coke. It was understood from the letter that the average for coke was for the Bluefield-Columbus line, and it was assumed that the average for coal was for the same line, although it was not specifically so stated. In a telegram dated January 16, 1912, Mr. Cox stated that the average lading of freight other than coal and coke on the Bluefield-Columbus line for 1910 was 17.35 tons per car.

These averages, therefore, being divided into the corresponding figures for ton-mileage shown in column A for coal, coke, and merchandise, give the car-mileages for those commodities, which, multiplied by the respective gross weights per car (30 tons being allowed for the tare weight of car), produce figures for column B representing the gross ton-mileage (i. e., including weight of car). By addition the corresponding figures for column B for "All freight" were obtained.

Column C.—In Cox's Exhibit No. 5 the total operating cost of the Pocahontas, Scioto, and Kenova divisions (Columbus-Bluefield line) for the year ending June 30, 1910, was \$7,378,605 for all freight. In the hearing it was agreed that on account of the heavier grades on the Pocahontas division the normal aver-

age cost per ton-mile for the regular train movement was somewhat higher than on the other two divisions—2.2 mills being considered a fair average for the Pocahontas division. As practically the entire movement of concentration occurred on the Pocahontas division, the total ton-mileage on that division was reduced by the 527,649,481 ton-miles accomplished in that movement. The remainder (400,001,336 ton-miles) was multiplied by 2.2 mills, and the product (\$1,012,003) was deducted from the total operating cost of that division (\$3,161,098), leaving \$2,149,095 as the cost of concentration for the entire line. This amount was therefore deducted from the total cost of the Bluefield-Columbus line, leaving \$5,229,600 as the cost of the main-line movement for all freight.

Since the cost of concentration was confined to coal and coke the \$2,149,095 of that cost was divided between these commodities on the basis of the gross ton-mileage, as already described under column B.

Since merchandise as well as coal and coke was concerned in the main-line train movement, the cost of that movement (\$5,229,600) was divided between these commodities on the basis of their respective gross ton-mileages (see column B).

The total cost of the main line and concentrating movements (to be entered in column C) was then secured by adding the costs described in the two paragraphs immediately preceding for the respective commodities.

This allocated to coal a total cost of \$4,170,217 as the entire cost of concentrating and hauling that commodity over the Bluefield-Columbus line during the year ending June 30, 1910. This amount, therefore, divided by the net ton-mileage of 1,885,748,823, produced 2.211 as the average cost per ton-mile, instead of 2.288, as used in Coxe Exhibit No. 2 (as revised).

DIVISION OF TOTAL COST OF CONCENTRATION BETWEEN NORMAL TRAIN MOVEMENT AND "EXCESS" COST.

In order to divide the total cost of concentration (\$2,149,095) between the normal train-haul cost and the "excess" cost, the total ton-mileage (527,649,481) was multiplied by 2.2 mills as the average train cost agreed upon as correct for the Pocahontas division. The product (\$1,160,829) was divided between coal and coke on the basis of the gross ton-mileage shown in column B for those items (see items 3 and 10) by which process there was assigned to coal \$918,264 and to coke \$242,565. These amounts deducted from their respective total costs of concentration leave \$781,760 for coal and \$206,506 for coke as the "excess" cost of concentrating those commodities. (See items 5 and 12.)

THE AVERAGE NORMAL COST OF HAULING COAL FROM THE MOUTH OF MINE (EXCESS COST ON ACCOUNT OF CONCENTRATION BEING EXCLUDED).

The amounts shown in column C against items 6 and 13 represent the sum of items 2 and 4 for coal and 9 and 11 for coke, respectively. The averages shown in columns D and E against items 6 and 13 are reached by dividing the amounts just described by the same ton-mileages as were entered against items 1 and 8, respectively.

AVERAGE "EXCESS" COST ON ACCOUNT OF CONCENTRATING COAL AND COKE.

As will be seen from the table, the amounts entered in column C, items 7 and 14, are identical with those entered against items 5 and 12, respectively, the averages entered in columns D and E being based on the respective entries originally made in columns A and B for items 1 and 8.

As will be noted from the table, the sum of the average costs entered in columns D and E for items 6 and 7 and for items 13 and 14 equal the average cost shown for items 1 and 8, respectively.

ESTIMATE OF COST BASED ON ALLOCATED TRAIN EXPENSES.

Determining the cost of moving coal by allocating fourteen of the primary expense accounts under the Commission's uniform system of accounts, and then estimating the balance of the expense (by dividing the allocated cost by the percentage which the total of the fourteen primary accounts is of the total operating expense), the cost in cents of assembling, transporting, and delivering coal upon the dock at the lake ports, together with the revenue received and the ratio of cost to revenue via the several routes, is shown in Table No. 32 following. This table was made from the revised cost figures prepared by the attorney for the Commission.

TABLE NO. 32.

Revised cost of hauling coal from West Virginia fields to Lake Erie ports.

Route.	Loaded move- ment cost.	Present rate.	Ratio of cost to present rate.	Proposed rate.	Ratio of cost to proposed rate.
	<i>Cents.</i>	<i>Cents.</i>	<i>Per cent.</i>	<i>Cents.</i>	<i>Per cent.</i>
Norf. & Wn. and Penna.....	45.667	112.00	40.77	121.25	37.66
Ches. & Ohio and C., H. & D.....	56.259	97.00	58.00	106.25	52.96
Kan. & Mich. and Hock. Vy.....	41.565	97.00	42.85	106.25	39.12
Balt. & Ohio:					
Fairmont, W. Va., to Lorain, Ohio.....	35.897	96.75	37.10	100.00	35.90
Glenwood, Pa., to Painesville, Ohio.....	31.340	88.00	35.60	.....	.....
Pittsb. & L. Erie and L. Shore & Mich. Sn.....	29.532	88.00	33.56	.....	.....
Pennsylvania:					
Conway, Pa., to Bedford, Ohio.....	27.100	88.00	30.79	.....	.....
Conway, Pa., to Harbor, Ohio.....	28.000	88.00	31.82	.....	.....

Route.	Loaded and empty move- ment cost.	Present rate.	Ratio of cost to present rate.	Proposed rate.	Ratio of cost to proposed rate.
	<i>Cents.</i>	<i>Cents.</i>	<i>Per cent.</i>	<i>Cents.</i>	<i>Per cent.</i>
Norf. & Wn. and Penna.....	76.155	112.00	67.99	121.25	62.81
Ches. & Ohio and C., H. & D.....	92.324	97.00	95.18	106.25	86.89
Kans. & Mich. and Hock. Vy.....	66.622	97.00	68.68	106.25	62.70
Balt. & Ohio:					
Fairmont, W. Va., to Lorain, Ohio.....	53.915	96.75	55.73	100.00	53.92
Glenwood, Pa., to Painesville, Ohio.....	.....	.....	.....	.....	.....
Pittsb. & L. Erie and L. Shore & Mich. Sn.....	42.152	88.00	47.90	.....	.....

TABLE NO. 33.

Average cost per ton-mile of moving coal from concentrating yards to Lakes.

	Assignable cost.		Total cost.	
	Loaded only.	Loaded and empty.	Loaded only.	Loaded and empty.
	<i>Mills.</i>	<i>Mills.</i>	<i>Mills.</i>	<i>Mills.</i>
West Virginia district:				
N. & W.....	0.455	0.890	0.747	1.461
Pennsylvania Co.....	.608	1.096	1.152	2.090
K. & M.....	.567	.994	1.068	1.870
H. V.....	.428	.822	.883	1.696
C. & O.....	.408	.779	.800	1.529
C. H. & D.....	.583	1.019	1.840	2.840
B. & O.....	.497	.871	1.013	1.777
Pittsburgh district:				
P. & L. E.....	.413	.....	1.242	.....
L. S. & M. S.....	.476	.....	1.181	.....
Pennsylvania Co. (to Harbor).....	.688	.....	1.523	.....
Pennsylvania Co. (to Bedford).....	.578	.....	1.279	.....
B. & O.....	.695	.....	1.418	.....

The above averages do not include any allowances for the cost of concentrating the coal in the field, which is found to be about 12 cents for a 30-mile haul and 10 cents for a 15-mile haul.

In considering the figures presented in this case by all of the experts, it is to be borne in mind that these include the cost of concentrating the coal in the Pocahontas and adjoining fields, irrespective of the fact that one-half of this coal goes to eastern destinations and moves but for a few miles over what we have called the Bluefield-
22 I. C. C. Rep.

Columbus line. The total coal mined in this district is 12,500,000 tons, of which 6,500,000 goes west through Columbus and 6,000,000 goes east through Bluefield. All of the concentrating being done in this district, the books of the Norfolk & Western charge the cost of such gathering to this Bluefield-Columbus line. From a letter of the Comptroller of the Norfolk & Western we have been able to discover the segregation of this tonnage with respect to its destination east or west of the Pocahontas district and find that the 6,000,000 tons of eastbound coal made 188,194,784 ton-miles in being concentrated. That is to say, in the gathering of this coal destined east each ton travels an average of 30 miles before reaching a main-line point. On the other hand, the coal which moves westward takes a trip of about 40 miles before reaching the main line. With these figures in hand we may eliminate from the cost figures the cost of concentrating this eastbound coal and thus arriving at the cost of transporting all freight over the Bluefield-Columbus line apart from gathering the eastbound coal. The Norfolk & Western in its figure of 2.28 mills, which it estimated to be the cost per ton-mile of moving all freight over the Bluefield-Columbus line, included this expense which did not attach to coal moving by way of Columbus. We therefore have made a computation based upon the elimination of the concentrating cost of this eastbound coal, and find the average cost of moving all freight over the Bluefield-Columbus line to be 2.177 mills per ton per mile, and the cost of moving coal to be 2.015 mills per ton per mile. Such computations are made upon the basis of the figures of the Norfolk & Western.

Charging against each character of freight, coal, coke, and merchandise its percentage of the cost of moving all freight based upon the gross weight of the car, we can approximate the cost of carrying coal. Cutting out from this the cost of concentrating the eastbound coal, we have arrived practically at a figure of 2 mills per ton per mile as the cost of carrying coal over the Bluefield-Columbus line. If these figures were applied to the coal moving over this line westward in accordance with the theory presented in exhibit No. 10, it would appear that this coal paid not only its cost of transportation and maintenance but all taxes, its proportionate share of fixed charges and dividends, and a slight balance of \$2,655.12.

If we take the line from Bluefield to Columbus, which is 346 miles, and add to that all the branches, which amount to 220 miles, this gives us a total of 566 miles, which is the total mileage of the Norfolk & Western between Bluefield and Columbus excepting sidings and second tracks. If now we add the second tracks (205 miles), we have a total of 771 miles. Seven hundred and seventy-one miles is

what percentage of all the mileage of the system excluding sidings? The answer is 34 per cent. Thirty-four per cent of the total capitalization of the system (\$207,000,000) amounts to \$69,000,000. This gives for each mile of track in the Bluefield-Columbus line, including second track and branches, a capitalization per mile of \$90,000. On this basis a double-track road is worth \$180,000 a mile, and a single-track line running up to a coal mine is worth \$90,000 a mile.

22 I. C. C. Rep.

No. 3853.

JOHN W. BOILEAU ET AL.

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY
ET AL.

Submitted March 2, 1912. Decided March 11, 1912.

Rate of 88 cents per net ton for the transportation of bituminous coal in carloads from the Pittsburgh, Pa., district to Ashtabula Harbor, Ohio, when for transshipment by vessel on the great lakes to points beyond, found to be unreasonable and rate of 78 cents prescribed for the future.

Wade H. Ellis, Louis D. Brandeis, Cyrus E. Woods, Charles M. Johnston, and Challen B. Ellis for complainant and intervening petitioner, Pittsburgh Coal Company.

W. M. Duncan and H. F. Baker for Henry W. McMaster and Francis H. Skelding, receivers of Wabash Pittsburgh Terminal Railroad Company, intervening petitioner.

O. E. Butterfield for Pittsburgh & Lake Erie Railroad Company and Lake Shore & Michigan Southern Railway Company.

A. P. Burgwin, W. M. Duncan, and F. D. McKenney for Pennsylvania Company; Pennsylvania Railroad Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; and Pittsburgh & Ashtabula Railway Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This proceeding brings in issue the freight rate of 88 cents per net ton for the transportation of bituminous coal in carloads from the Pittsburgh, Pa., district to Ashtabula Harbor, Ohio, for transshipment by vessel on the great lakes to points beyond. This, in common with coal transported between other producing points and lake ports, is known as "lake-cargo coal" and moves only during the period of open navigation.

The original complaint was filed on February 15, 1911, in complainant's own behalf and in behalf of shippers of lake coal from

the Pittsburgh district. The complainant is a resident of Pittsburgh, engaged in the business of buying and selling coal lands and property for himself and others. On May 13, 1911, a petition of intervention was filed by the Pittsburgh Coal Company, a corporation engaged in the business of mining and shipping coal from the Pittsburgh district, which adopted the original complaint as a part of its petition.

On August 19, 1911, the receivers of the Wabash Pittsburgh Terminal Railroad Company filed, on behalf of that carrier, a petition to intervene as a party defendant. Traffic originating on the line of this defendant and its subsidiary, the West Side Belt Railroad, moves to Ashtabula in connection with the Wheeling & Lake Erie Railroad. The other defendants, seven in number, are included within the New York Central and the Pennsylvania Railroad systems and form two lines of shipment between the points in question.

The Pittsburgh district embraces, generally speaking, territory within a radius of 40 miles from the Pittsburgh courthouse. Known geologically, it is the Pittsburgh bed of coal which extends into southwestern Pennsylvania, eastern Ohio, and northern West Virginia and includes about 300 mines.

The general allegations of the complaint are that the aforesaid rate of 88 cents is excessive and unreasonable in and of itself; that it is discriminatory and constitutes an undue preference and advantage to the shippers of other localities over those of the Pittsburgh district and subjects said district to undue and unreasonable prejudice and disadvantage; and that a reasonable rate will not exceed 50 cents per ton. It is specifically asserted that the present rate has been fixed by agreement among the railroads so as to discriminate against the Pittsburgh field in favor of the West Virginia fields; that the cost of producing coal is considerably greater in the Pittsburgh mines than in the West Virginia mines and that under the influence of existing freight rates the latter mines have increased their production proportionately more rapidly. In their brief the complainants summarize their position as follows:

They are entitled to a fair and reasonable rate from the Pittsburgh district to Ashtabula Harbor, considered with reference to the cost of the service and the value of the service; the rate now in effect, when viewed in the light either of the cost to the carrier of hauling the coal or the value of the service rendered to the shipper or to the consumer, is extortionate; and there are no other considerations which might enter into the determination of a fair rate which would justify the rate in question.

The defendants deny the allegations of the complaint and contend that the rate in question is reasonable.

Testimony in this proceeding was taken by the Commission on five separate occasions; extensive briefs have been filed and oral argu-

ment made by the interested parties. The voluminous record thus submitted contains much information that is helpful to a determination of the issues involved.

The coal moving over the New York Central lines from the Pittsburgh district to Ashtabula is transported practically in solid trains. Throughout the Pittsburgh district are various points on the Pittsburgh & Lake Erie road known as assembling yards. The empty cars are distributed to these yards and thence switched out to the mines. After loading, the cars are moved back to the assembling point and there made into solid trains for road service. The movement to Ashtabula is via the Pittsburgh & Lake Erie Railroad, Lake Shore Junction (Youngstown, Ohio), and Lake Shore & Michigan Southern Railway in trains averaging 65 cars each of 42 to 44 tons per car.

The coal moving via the Pennsylvania lines originates on the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad, the Monongahela and Pittsburgh divisions of the Pennsylvania Railroad, and the West Pennsylvania Railroad. It passes from the initial lines to the Pittsburgh, Fort Wayne & Chicago Railway and Pittsburgh, Youngstown & Ashtabula Railway, which transport it to Ashtabula. All of this traffic moves via Conway, Ohio, which is a very large yard and an assembling point for freight consigned to various destinations. The general superintendent of these lines testified that the movement into Conway is "not at all exclusively" solid train loads, and that his road makes no effort to move it in that manner. He further stated that from Conway to Ashtabula the average train load of lake coal contained about 40 cars, with an average tonnage of from 40 to 44 tons each.

While Ashtabula is distant from Pittsburgh proper only 124.6 miles via the Pennsylvania lines and 128.1 miles via the New York Central lines, the average distance from the district was stated by the assistant freight traffic manager of the Pennsylvania lines to be 148 miles via his lines and 152 miles via the New York Central lines. These figures, however, are based exclusively on mileage and take no account of the tonnage from the different mines. Upon the latter basis, by computing the actual railroad mileage and the actual tonnage from each mine, the weighted average distance is approximately 148 miles. This corresponds with the mileage given in a statement filed by the Pennsylvania Company in Investigation and Suspension Docket No. 26, the *West Virginia Lake-Coal case*, 22 I. C. C. Rep. 604, and will be used in this case as the distance a ton of lake coal is transported from the Pittsburgh district to Ashtabula, although our general conclusion would be no different if "straight" averages were to be used.

During the past 11 years the rate from the Pittsburgh district to Ashtabula Harbor, free on board cars there, has increased 15 cents, as follows:

Year.	Rate per net ton.	Year.	Rate per net ton.
	<i>Cents.</i>		<i>Cents.</i>
1901.....	73	1907.....	88
1902.....	73	1908.....	88
1903.....	83	1909.....	88
1904.....	83	1910.....	88
1905.....	83	1911.....	88
1906.....	83		

Owing to the prevalence of rebating prior to the amendments of 1906 to the act to regulate commerce, it was urged that little reliance can be placed upon the accuracy of this rate as an indication of the actual charge for transportation during that period. From 1887 to 1900 the rate fluctuated—being successively \$1, \$0.90, \$0.85, \$0.90, \$0.70, and \$0.80—and a Pittsburgh operator testified that it was commonly understood by all shippers that there was a refund from this published rate to the lake shippers.

While the rate increased 20 per cent, the increase from 1901 to 1910 in tonnage of lake coal received over defendants' lines at Ashtabula was approximately 320 per cent, as shown by the following table:

Year.	Coal shipped.	Year.	Coal. shipped.
	<i>Net tons.</i>		<i>Net tons.</i>
1901.....	1,318,860	1906.....	2,619,483
1902.....	1,406,206	1907.....	3,235,538
1903.....	2,046,442	1908.....	3,027,538
1904.....	1,980,104	1909.....	3,167,861
1905.....	2,051,152	1910.....	5,573,302

Practically all of this tonnage originated in the Pittsburgh district, the record showing that for the year 1910, 4,814,526 tons moved over defendants' lines, of which the New York Central lines transported 2,221,312 tons and the Pennsylvania lines transported 2,593,214 tons. This movement, being restricted to the period of open navigation, was from about May 1 to November 15, a fact which makes the traffic desirable alike to the producers and the carriers. It comes at a time when the movement for domestic use has fallen off and when equipment is required at Ashtabula to transport the great volume of iron ore that reaches that port by vessel.

It is the contention of complainants that this ore movement is an important factor in the consideration of the cost of hauling the coal because it serves to remove the expense of any back haul of empty cars. An exhibit submitted by the deputy collector of the port of

Ashtabula shows that in 1909 a total of 9,027,237 net tons and in 1910 a total of 10,751,599 net tons of ore were received at that point. It was testified that this tonnage was shipped over the lines of defendants as far as Youngstown, Ohio, and that about 60 per cent of the movement via the New York Central lines was to the Pittsburgh district. The general superintendent of the Pennsylvania lines stated that in 1910 his lines moved out of Ashtabula 79,592 carloads of ore. If, as before shown, the same lines moved into Ashtabula in 1910, 2,593,214 tons of coal, it appears that on basis of his estimate of from 40 to 44 tons of coal per car the number of cars of lake coal hauled from the Pittsburgh district to Ashtabula by the Pennsylvania lines was about 61,000, or over 18,000 cars less than the number of cars used in the ore movement from Ashtabula via the same lines. On behalf of the carriers it was suggested that the ore and coal movements not being strictly contemporaneous there resulted a corresponding amount of back haulage. However, it is undisputed that the volume of ore and coal tonnage is heavy during the open lake season and that each constitutes, in a measure at least, a back haul for the other; and since the ore tonnage is much greater than the lake-coal tonnage, there would appear to be ample ground for the assertion that there can be empty haulage for only a small part of the cargo coal, due possibly to the contingencies attendant upon vessels going and coming.

Much stress is laid by complainants upon the charge that by agreement among the railroads the rate of 88 cents was fixed so as to discriminate against the Pittsburgh field in favor of the West Virginia fields and that this rate is not the result of normal competition between the railroads running from the Pittsburgh district to Lake Erie or between those roads and others serving the West Virginia districts. It is a matter of record that the custom had obtained for many years for the representatives of the initial carriers of lake-cargo coal from the Pittsburgh, Ohio, and West Virginia districts to meet and determine what rates should prevail from the mines to the Lake Erie ports. The rates so fixed from the West Virginia districts were, until March 1, 1912, as follows:

District.	Rate per net ton.	Differ- ential in fa- vor of Pitts- burgh.
	Cents.	Cents.
Pittsburgh, Pa.	88	.....
Pocahontas, W. Va.	112	24
Kanawha, W. Va.	97	9
Fairmont, W. Va.	96½	8½

On basis of the average distance to all lake ports given in defendants' brief (not the weighted average) the ton-mile revenue accruing to the carriers under these rates is as follows:

District.	Distance.	Ton-mile revenue.
	<i>Miles.</i>	<i>Mills.</i>
Pittsburgh, Pa.....	160	5.5
Pocahontas, W. Va.....	434	2.6
Kanawha, W. Va.....	400	2.4
Fairmont, W. Va.....	248	3.9

It will be seen that the carriers in fixing the rates from these competing mining districts practically disregarded distance as well as the fact that the rail competition from the Pittsburgh district to Lake Erie may be expected to be, under competitive conditions, much greater than from any of the West Virginia fields. In March, 1909, the traffic managers of the interested lines, at a meeting in New York, decided to increase the differentials between the Pittsburgh and West Virginia fields by advancing the Pocahontas and Kanawha rates 9½ cents each and the Fairmont rate 3½ cents. This proposed change was first enjoined by a court and later suspended by this Commission. The propriety of the increased rate was passed upon in the *West Virginia Lake-Coal case* decided concurrently herewith, 22 I. C. C. Rep., 604, and the report therein is referred to for a statement of the conditions prevailing in the West Virginia fields.

For 10 years prior to March 1, 1912, the differentials before shown were unchanged. Under this relation of the rates the coal tonnage from the West Virginia mines to the lake ports has increased from 739,011 tons in 1901 to 7,279,384 tons in 1911, or an increase of approximately 885 per cent, while the tonnage from the Pittsburgh district to the lake ports has increased from 2,704,059 tons in 1901 to 10,197,127 tons in 1911, or an increase of approximately 277 per cent. During the same period West Virginia's proportion of the total lake-cargo coal shipped from the Pennsylvania, West Virginia, and Ohio districts increased from 14.13 per cent to about 34.19 per cent, while the proportion shipped from the Pittsburgh field decreased from 51.69 per cent to about 46.59 per cent.

That this rate adjustment is not justified by any difference in the expense of producing coal is established by the testimony, which shows that it costs considerably more to mine a ton of coal in the Pittsburgh district than in West Virginia. The figures submitted by the Pittsburgh Coal Company, one of the largest shippers in the district, show that the total cost of production, including all overhead charges, of a ton of run-of-mine coal in 1905 was 89.43 cents, and in 1910 it was 97.82 cents, while the cost of three-quarters coal, which

forms the greater part of the lake-cargo coal, is estimated at 10 cents additional. As against these costs, the testimony is that the West Virginia operators can and do sell at a profit their run-of-mine coal for as low as 65 cents per ton and their three-quarters coal (Fairmont) for 68 cents. It would seem to be safely within the range of actual experience as reflected in the various exhibits submitted in this case to say that it costs from 80 cents to \$1 in the Pittsburgh district and from 50 to 60 cents in the West Virginia districts. In both fields instances are recorded which lie outside of this range.

A comparison of the rates from West Virginia and Pittsburgh to other markets supports complainants' contention that no advantages were given by the carriers to Pittsburgh operators to offset the lower basis from West Virginia to the lake. On coal shipped to the Atlantic seaboard for transshipment, the advantage in rates is with West Virginia, although in some instances it is not so accessible to the market. The following table shows some of the rates to tidewater, outside the capes, from Pittsburgh and other districts:

District.	Port.	Railroad.	Dis- tance.	Rate per net ton.	Rate per ton per mile.
			Miles.		Mills.
Pittsburgh.....	Curtis Bay.....	Baltimore & Ohio.....	200	\$1.25	4.25
New River.....	Newport News.....	Chesapeake & Ohio.....	420.8	1.25	2.93
Clinch Val. No. 2...	Lamberts Point	Norfolk & Western.....	458.3	1.25	2.73
Latrobe.....	Canton piers.....	Pennsylvania.....	291	1.05	2.61
Kanawha No. 3....	Newport News.....	Chesapeake & Ohio.....	551	1.34	2.45

In defending the rate of 88 cents to Ashtabula, which affords a ton-mile revenue of 5.94 mills under the weighted average distance of 148 miles, and approximately 5.87 mills under the straight average mileage stated in defendants' supplemental brief, the counsel for defendants rely upon twelve decisions wherein the Commission fixed rates on coal yielding per ton-mile revenues of 5 mills and upward. These rates apply between points such as Duluth to St. Paul; Chicago to Fort Dodge, Iowa; Oklahoma and Arkansas to Texas and Louisiana points; Wyoming points to Idaho points, etc., and the circumstances and conditions surrounding the traffic are so dissimilar in essential respects to the transportation from Pittsburgh to Ashtabula that it is difficult to see how these cases can be of assistance to the Commission in the present proceeding.

Chapter one of the argument in defendants' brief is devoted to an effort to show that "a higher rate for the identical service performed less efficiently has been approved by the Commission" in the case of *Imperial Coal Co. v. P. & L. E. R. R. Co.*, 2 I. C. C. Rep., 618. This case was decided on March 23, 1889, within two years from the effective date of the original act to regulate commerce. That conditions

have materially changed since that time is demonstrated by the fact that in 1890 the freight density per mile of line operated of the Pittsburgh & Lake Erie Railroad was 2,324,243 ton-miles as against 9,224,394 ton-miles in 1911, while the operating expense per ton-mile of that road decreased from approximately 6.58 mills in 1890 to less than 4 mills in 1911.

We have already given figures showing the increase in the lake-coal tonnage from the Pittsburgh district. Taken at their face value, without reference to other data, they would appear to suggest undoubted prosperity in the coal industry in that district. By comparison with the figures representing lake tonnage from the West Virginia district it will be observed that there has been relative retrogression and corresponding lack of prosperity. Not only in the instant case, but also in other proceedings now pending or recently decided, the position was quite generally taken by witnesses representing the mining interests that lake-cargo coal must to some extent be looked upon as surplus product which enables the operators to keep the mines in operation for a greater number of days in each year, to maintain their business organization intact, to hold the miners together, and to enable them to earn living wages. Defendants laid some stress upon the increased intensity of competition among the various coal fields, especially between the Pittsburgh and West Virginia fields. A general survey would strongly support this view. It is unquestioned that wages and the standard of living in the Pittsburgh district are generally higher than in most of the West Virginia districts, and that the cost of mining as a whole in the former district is greatly in excess of the cost in the latter, the exact extent of which is indicated in tables hereinafter given. Whatever weight it may be permissible under the statute to give to considerations of this kind in the determination of a question like that presented here, it would seem that wages of miners and their standard of living should be kept in view, and that great issues affecting them should not be decided without at least bringing their interests into the horizon of consciousness. Counsel for defendants argued that the profits of operators should be considered in this case. We interpret his argument to mean that all the conditions of every kind whatsoever surrounding this coal industry, which may be directly or indirectly affected by the rates, such as the profits of the operators and carriers, the wages and standard of living of the miners and railway employees, may be rightfully considered. Whatever legal limitations may be imposed upon this view by the act to regulate commerce as at present interpreted, from the point of view of public policy and humanity, considerations like those adverted to by counsel should most assuredly not be ignored.

The actual condition of the operators in the Pittsburgh district was described in great detail and some question was raised regarding the accuracy with which the situation was depicted. Detailed exhibits relating to items of expense in mining, wages, prices, etc., were introduced. After giving due consideration to the doubts cast upon their actual condition we are inclined to think that when witnesses and counsel for complainant said that generally speaking the operators in the Pittsburgh district were now standing with "their backs against the wall" and "struggling for existence," the situation was possibly not greatly exaggerated so far as this record discloses.

Not only in the Pittsburgh district, but in the Ohio districts—controversies regarding which are now pending before the Commission, and voluminous testimony with respect thereto already submitted—the desire to keep down the cost of mining has apparently resulted in wasteful mining operations, and to that extent has forever deprived the world of that much of its fuel supply. There is presented here, therefore, a problem in conservation of the most practical character, commented upon in the record at length, yet quite out of the range of our powers under the act to regulate commerce.

To reinforce what has been said with respect to mining conditions in the Pittsburgh district we give below a few comparisons based upon the testimony and exhibits in this case:

Analysis of cost of production, 1905-1910, Pittsburgh Coal Co.

Item.	Cost per ton.					
	1905	1906	1907	1908	1909	1910
Labor.....	\$0.6125	\$0.6374	\$0.6595	\$0.6782	\$0.6704	\$0.7187
Supplies.....	.0845	.0791	.0842	.0853	.0794	.0858
Fuel.....	.0160	.0138	.0170	.0205	.0194	.0191
Cost at mine.....	.7020	.7303	.7418	.7970	.7692	.8236
General office expense.....	.0347	.0279	.0395	.0431	.0391	.0360
Taxes, etc.....	.0414	.0273	.0354	.0432	.0382	.0355
Depreciation.....	.0379	.0325	.0241	.0294	.0280	.0273
Royalty.....	.0713	.0736	.0828	.0863	.0774	.0858
Total overhead charges exclusive of bond interest and dividends.....	.1853	.1634	.1729	.2020	.1777	.1546
Total cost.....	\$0.8873	\$0.8937	\$0.9137	\$0.9990	\$0.9469	\$0.9782

Cost of coal on cars—West Virginia.

	Per ton.
Cost at face—average of 12 mines.....	\$0.2924
Labor (\$0.2046 less \$0.0682).....	.1364
Supplies—same as Pittsburgh.....	.0941
Fuel same as Pittsburgh.....	.0185
Total.....	.5414

West Virginia's advantage in the cost of machine mining.

	Cost per ton.	Difference.
Coal from 5 to 6 feet:		
Pittsburgh.....	\$0.5425	.....
Kanawha—		
Eagle seam.....	.3531	\$0.1894
Boomer and other.....	.3050	.2375
Cabin Creek.....	.2830	.2596
Pocahontas-West Vivian.....	.2885	.2540
Island Creek-Holden.....	.2491	.2934
New River-Thayer.....	.4140	.1285
Coal River district.....	.3166	.2259
Coal from 7 to 8 feet:		
Pittsburgh.....	.4540	.....
Fairmont—		
Mongah mine No. 8.....	.2714	.1826
Gypsy mine.....	.2633	.1907
Federal Coal Co.....	.2991	.1549
Coal River district: Dorothy.....	.3166	.1374
Pocahontas district: Pocahontas Coal Co.....	.2168	.2372

Turning now to the condition of the carriers defendent in this case we call attention to a table which has been compiled from the annual reports filed with this Commission. This table shows in a general way the financial condition of each of the defendants under rates in force during the years named.

Annual average, 1907-1911: Financial results as shown by income account.

	Pitts- burgh & Lake Erie	Lake Shore.	Pennsyl- vania Company.	Pitts- burgh, Cincin- nati, Chi- cago & St. Louis.	Pennsyl- vania Railroad Company.	Wa- bash Pitts- burgh Ter- minal.	West Side Belt.	Wheeling & Lake Erie.
Operating income, be- ing operating reve- nues less operating expenses and taxes.....	\$6,492,477	\$13,494,315	\$13,805,107	\$9,184,495	\$40,525,075	\$279,118	\$111,851	\$1,478,168
Other income, being rents and returns on securities held.....	188,896	7,311,854	13,022,473	671,775	16,036,821	137,563	3,936	55,770
Gross corporate income.....	6,681,373	20,806,372	26,827,580	9,856,200	56,561,896	416,681	115,787	1,533,938
Payments for lease of road or rent or loss of other property.....	645,157	2,227,155	10,229,587	2,168,114	9,495,750	100,084	74,581	82,764
Interest on funded debt.....	220,000	5,893,711	5,814,526	2,666,199	12,135,208	489,657	19,168	862,332
Dividends from in- come.....	\$1,531,999	7,398,449	\$4,600,000	\$2,683,411	21,483,674	.....	.....	.....
Per cent on stock.....	(10 to 12)	(12 to 18)	(6 to 8)	(3½ to 5)	(6 to 7)	.....	.....	.....
Miscellaneous deduc- tions.....	4,161	486,685	1,925,620	773,346	6,658,341	175,351	21,106	383,623
Appropriations for im- provements.....	1,029,755	2,034,937	2,594,449	1,257,133	5,635,989	.....	.....	16,201
Average surplus from each year's business carried to profit and loss.....	2,580,300	2,765,434	1,661,388	808,057	1,152,933	348,412	931	189,017
Total deductions.....	6,681,373	20,806,372	26,827,580	9,856,200	56,561,896	416,681	115,787	1,533,938

Does not include additional dividends declared from surplus.
* Extra dividends from surplus in 5 years, 65 per cent.
* Extra dividends from surplus in 5 years, 33½ per cent.
* Does not include 2½ per cent on preferred and 2 per cent on common, payable in 1907.
* Deficit.

In the *West Virginia-Lake Coal case, supra*, there were introduced in evidence by defendants not only extensive data bearing upon the cost of transportation, but equally extensive investigations were conducted at the instance of the Commission. The statistical compilations thus obtained show in great detail the assembling and other terminal costs connected with the transportation of lake-cargo coal, as well as the line or movement expenses. In the instant case one comprehensive volume of 134 printed pages was introduced by a witness for complainant, showing in careful detail the manner in which the various primary accounts had been treated, and what statistical processes had been subsequently resorted to in arriving at the cost of transporting lake-cargo coal over some of the defendants' lines. A witness for the interveners testified in much detail regarding the cost of assembling coal in the Pittsburgh district and related items based upon coal-company experience. The testimony of these two witnesses is mutually supplementary and throws much light upon the expense of transporting coal from the Pittsburgh district to Ashtabula. We have supplemented the analyses made by the various witnesses in these different coal cases by independent tests of our own. In one of these processes we made two general assumptions: (1) that all branches of the defendants' business yield an equal per cent of net revenue, and (2) that the operating ratio of all branches except freight is 100 per cent, and that, therefore, freight yields the entire net revenue earned by the carriers. It is obvious that the figures which are based upon the assumption that the freight branch of the business yields the entire net revenue results in figures representing the minimum freight cost, while the other set, based upon the assumption of equal net revenues in all branches, results in maximum figures. These comparisons seem to show that the cost statistics submitted by complainants are quite within the range of actual experience if the coal traffic to the lake is considered by itself without reference to the traffic as a whole, but that they lie very near the minimum, if not below, rather than the average or the maximum. In one instance our check of the figures would seem to suggest that the minimum had been closely approximated, while in a part of another calculation the maximum had been somewhat exceeded.

The following table indicates the maximum and minimum freight costs referred to above:

Estimated operating expense per ton for 148 miles, average for all freight, for fiscal year ending June 30, 1911.

	Pittsburgh & Lake Erie.	Lake Shore.	Pennsyl- vania Co.
Per cent products of mines are of tons carried.....	77.21	57.87	72.99
Average haul.....miles..	64.25	167.14	80.72
Average tons per train.....	1,214	603	487
Operating expense per ton for average haul:			
Maximum.....cents..	23.85	63.25	32.22
Minimum.....do....	20.22	49.71	27.28
Allowing 10 cents as independent of distance, the road expense is—			
Maximum.....mills..	2.156	3.186	2.753
Minimum.....do....	1.591	2.376	2.141
Total operating expense for 148 miles, per ton—			
Maximum.....cents..	41.91	57.15	50.74
Minimum.....do....	33.55	45.16	41.69

Taken all together these different statistical results point in the same direction and tend to show that the operating expense of transporting Pittsburgh coal to Ashtabula is probably less than one-half of the present rate of 88 cents.

Early in the hearing, petitioners submitted a series of requests for statistical information. During the course of the hearing and again at its close some of these requests were repeated, in groups or in their entirety. They included requests for copies of defendants' annual reports to their stockholders for the years 1909 and 1910, and viewed generally they related to such matters as tonnage involved, the number of men and their wages concerned in the assembling and movement of lake coal, empty-car movement, etc. After considering carefully all the information available in connection with the West Virginia cases, the testimony and exhibits of the various witnesses in the instant proceeding, and the data contained in the annual reports filed by the defendant carriers with this Commission, we did not feel justified in putting defendants to the trouble and expense of furnishing the information called for by the petitioners. During the course of the hearing, and while some of these requests were urged with particular force, we made a careful estimate of the amount of time and money which compliance with such requests would involve. While some of them would have cost very little or nothing, all of them taken together would have involved the expenditure of a very substantial sum of money. It is a fact that the defendants practically ignored all testimony bearing upon the cost of conducting this business, except for general allegations of counsel upon the argument that he was not at all clear that expenses did not increase with improved facilities. If, contrary to general impression and logical expectation, a more highly developed and better equipped railway can not do business on as low a basis per unit of traffic as a

railway less developed and with poorer equipment, that conclusion should be clearly and unmistakably demonstrated and proven, and not be accepted on vague impressions or general allegations before consequential action is taken based upon it. Since some of the information requested by the petitioners bearing upon the cost of conducting transportation in the coal trade could have been furnished without appreciable trouble or expense, it must be presumed that the defendants realized the futility of defending the 88-cent rate by reference to the cost of conducting the business to which the 88-cent rate applies. Whether this was the view of the carriers or not, such is the fact. Every combination and analysis of figures which has been, and we believe can be, legitimately made, or with any degree of propriety applied, points unmistakably to a cost of transportation much too low to serve in the slightest degree to defend the 88-cent rate.

To be sure costs do not determine rates; yet most rates have within them as a constituent the element of cost. Cost is generally an important element in arriving at a judgment with respect to a rate. What weight shall be given to that element as compared with all the other elements entering into a particular rate, such as the value of the service, with its bundle of constituents, and the various conditions surrounding the particular traffic, is a matter to be decided in each individual case. Questions regarding the calculation of the cost of service and the weight to be given to such cost suggest controversies which are as old as the railway itself. As between the two cardinal principles of rate making—the cost of the service and the value of the service—the first is decidedly more capable of exact determination and mathematical expression than the latter. If, as some would have us believe, no measure has yet been discovered for ascertaining the cost of the service, what measure is there suggesting anything definite and tangible and sufficiently practical in its application to carry conviction which can be applied to the value of the service? By which, after all, we mean to say little more than that the cost of the service is ascertainable with much more precision and capable of more tangible expression than the value of the service. Nevertheless both cost and value must be considered as well as all other elements entering into a rate.

As the annual reports to Congress demonstrate, this Commission has for many years felt the necessity of having information regarding the value of the physical properties of the carriers in the United States as an element in the valuation of their entire properties. The want of this information is a serious handicap in the proper consideration and disposition of the instant case. There is before us nothing whatsoever upon which we could with any degree of confidence arrive at an approximation of the value of the property devoted to

the public use and upon which these carriers are entitled to a fair return and to which the lake-cargo coal traffic should make its fair and just contribution. To be sure we have before us figures representing the aggregate outstanding bonds and stocks, but it is well understood that the total capitalization of a carrier is not necessarily a correct measure of the value of the property devoted by it to the public use, nor in many instances even a fair indication of what the value of such property might be. A compilation showing the comparative growth of capitalization and of traffic for all the railways in the United States reflects a gradual tendency toward a decrease in capital charges as the density of the traffic increases. For instance, in 1890 the capitalization per unit of traffic adopted in such a compilation was approximately 7.50 cents, while in 1909 it was approximately 5.25 cents. Because of the fundamental changes in the forms of accounts beginning with the fiscal year 1908, some of the defendant carriers have shown a marked increase in capital charges per unit of traffic in recent years, contrary to the general tendency. It appears that formerly some of them charged to operating expenses great sums which, under the new rules of accounting, can not thus be charged, and in consequence the capital account has been correspondingly increased. This would account in part at least for the deviation from the general rule. It is difficult to say, in the absence of proper valuation figures, what additions should be made to operating expenses for capital charges. For the leading railways in the United States during the year 1911, 13 had an operating ratio in excess of 75 per cent; 32 between 65 and 75 per cent; 15 from 55 to 65 per cent; and 4 under 55 per cent. That of the New York Central & Hudson River Railroad Company was 73.9; of the Pennsylvania Railroad, 72.15; of the Pennsylvania Company, 68.28; while that of the Pittsburgh & Lake Erie was but 49.42. These ratios would seem to indicate that if there is added to the ascertained operating expense 50 per cent for capital charges, we arrive at an equivalent of the operating ratio of 66 $\frac{2}{3}$ per cent, which is approximately near the lower margin of averages for the leading railways in the United States. If two-thirds of the operating expenses were to be added to such expenses the equivalent of an operating ratio of 60 per cent would be arrived at, and a fairly liberal treatment would be accorded to the carrier in this respect. All of which, however, simply goes to confirm the view that in the absence of reliable figures which represent the value of the property, estimates of cost, such as those which stand upon the record in this case, are mere approximations—especially when applied to a specific branch of the traffic—which are interesting and to a certain extent useful as general guides, but which can not be relied upon as decisive factors.

Defendants have argued with much pertinacity that the pending question is exclusively a question of differentials. The differential is certainly involved, because a change in one of a series of related rates changes the relation among all of them. While the differential is involved, that is not all that is involved. The testimony of the defendants makes the Pittsburgh-Ashtabula rate the keystone of the entire system of lake-coal rates. This keystone is involved in this proceeding. It determines the relative level of all other rates in the structure and should, therefore, be considered carefully and deliberately as a rate in and of itself without reference to any other rate.

Viewed in the light of all the evidence and our own inquiries, the 88-cent rate looks high. Complainants assert that there exists no power anywhere to let a shipper into a market by advancing the rate to another shipper. If the rate which the other shipper is paying is unduly low, we doubt whether this contention is tenable, and to this extent the general principle appealed to does not appear to us to be sound. But even though counsel have stated their contention somewhat too broadly, as applied to the situation in the Pittsburgh district, it appears to point to the truth in this case. We think it only a fair inference from this record that the Pittsburgh rate was raised step by step, not to bring it up to a level which the carriers might have regarded and defended as reasonable, but in order to let certain competing coal fields into the lake trade. And the record is conclusive that it is not a competitive rate.

Defendants argue that the lack of prosperity among the Pittsburgh operators is due to excessive competition among the operators in the different districts. Granting that this be so, does that justify the imposition of an excessive rate upon the traffic from one of the competing fields? The Pittsburgh field is entitled to a reasonable rate whether it brings the expected relief or not and irrespective of the specific channels into which the amount of the reduction in the rate will flow.

By comparison with the rates from other important coal-producing areas to important consuming areas, such as the rates from the West Virginia and Illinois fields, the Pittsburgh rate is high. It should also be borne in mind that the rail rates on lake-cargo coal are in reality portions or divisions of through charges covering long-distance traffic.

We have made careful estimates of the probable effect upon the defendant carriers and upon the traffic from the various coal fields of a reduction in the 88-cent rate to various levels from 50 cents up. In making these estimates we have considered not only the total tonnage directly involved, but also the collateral tonnage and the effect of the whole alike upon carriers, operators, and consumers. This means that we have also considered readjustments which it may

be necessary to make in other rates through the establishment of various differentials and their probable effect upon the carriers and all other considerations in the record which it was possible for us to bring to bear upon the issues here presented. After very careful deliberation and consideration of all the factors which enter into the contentions as presented by both sides in this controversy, we believe that the rate on lake-cargo coal from the Pittsburgh district to Ashtabula should hereafter not exceed 78 cents per net ton.

From the point of view of the specific cost of doing this particular business this rate is still too high; but, as we have said before, cost is only one of the elements entering into a rate. When we consider the coal rates from all the fields which will be affected by this change in the Pittsburgh rate, the disturbance in established differentials, the possible deflection of the currents of coal trade and its effect upon operators elsewhere, the effect upon the carriers directly involved and the indirect effect upon other carriers, and all the other valid considerations, we are forced to the conclusion that a rate lower than this would not be just and reasonable under the conditions disclosed by this record.

The intervening defendant and its Pittsburgh connections will find this traffic profitable to the extent that they can get it. The necessities circumstances in which this defendant finds itself as a result of events not connected with the Pittsburgh lake-coal traffic can not be accepted as the measure of reasonableness of a rate to be imposed upon that traffic in the future.

In view of all the matters herein set forth it is our opinion, and we therefore find, that the present rate of 88 cents is unjust and unreasonable, and that the defendants shall maintain for a period of two years from the date hereof a rate not to exceed 78 cents from the mines in the Pittsburgh district to Ashtabula Harbor, Ohio.

An order in accordance with these conclusions will be issued.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED
REPORT DURING THE TIME COVERED BY THIS VOLUME.

1973. *MORRIS & COMPANY v. UNION PACIFIC RAILROAD COMPANY ET AL.* Rates on cattle from Green River, Wyo., to Denver, Colo. *W. W. Borders* for complainant. *Hale Holden, N. H. Loomis,* and *F. C. Dillard* for defendants. March 15, 1912. Transferred to Special Reparation Docket for adjustment.

2425. *KING POWDER COMPANY v. PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.* Rates on detonite from Kings Mills, Ohio, to Bloomfield and South Linton, Ind. *Burton B. Tuttle* for complainant. *C. B. Fernald* for defendants. January 8, 1912. Dismissed for want of prosecution.

2594. *WILLIAM WIRT CLARKE & SON v. PENNSYLVANIA RAILROAD COMPANY ET AL.* Rates on sewer pipe from Zalia, W. Va., to Waverly Siding, Baltimore, Md. *Addison H. Clarke* and *Hyland P. Stewart* for complainants. *Hyland P. Stewart* and *H. S. Kealhofer* for interveners. *George Stuart Patterson* and *Wm. A. Parker* for defendants. December 27, 1910. Transferred to Special Reparation Docket for adjustment. January, 1912. Claim adjusted.

3402. *RICHARDSON LUBRICATING COMPANY v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.* Rates on petroleum and products from points in Oklahoma to Quincy, Ill. *Fred. H. Wood* for St. L. & S. F. R. R. Co. October 9, 1911. Dismissed for want of prosecution.

3424. *A. P. BRANTLEY COMPANY v. NEW ENGLAND NAVIGATION COMPANY ET AL.* Misrouting of shipment of sea-island cotton from New Bedford, Mass., to Savannah, Ga. *M. P. Callaway* for defendants. January 9, 1912. Dismissed for want of prosecution.

3468. *OTOE PRESERVING COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY.* Misrouting shipment of canned goods from Nebraska City, Nebr., to Roswell, N. Mex. *Ritzer & Haywood* for complainant. *James C. Jeffery, H. J. Campbell,* and *C. C. P. Rausch* for defendants. February 9, 1912. Dismissed. Barred by statute of limitations.

3491. *E. B. MULLER & COMPANY v. GRAND TRUNK WESTERN RAILROAD COMPANY ET AL.* Rates on chicory from Port Huron, Mich., to
22 I. C. C. Rep. 657

New Orleans, La. *David McMorran* for complainant. *H. C. Martin* for G. T. System. December 26, 1911. Transferred to Special Reparation Docket for adjustment.

3580. ANACONDA COPPER MINING COMPANY v. GREAT NORTHERN RAILWAY COMPANY ET AL. Class and commodity rates from Denver territory and several other territories to Montana common points. *Wm. A. Glasgow, jr.*, and *James N. Beck* for complainant. *A. H. Bright, Henry Wolf Bikle, Geo. Stuart Patterson, E. E. Whitted, Jas. B. Sheean, C. W. Bunn, Chas. Donnelly, J. D. Armstrong, C. C. Wight, F. C. Dillard, N. H. Loomis, P. L. Williams, Edu. D. Robbins, W. S. Horton, A. P. Humburg, Blewett Lee, W. W. Cotton, Wm. F. Herrin, W. F. Dickinson, Henry T. Rogers, O. E. Butterfield, Clyde Brown, Hale Holden, Winston, Payne, Strawn & Shaw* and *Wm. Ellis* for defendants. December 9, 1911. Dismissed on motion of complainant.

3647. LUDOWICI-CELAIXON COMPANY v. BALTIMORE & OHIO CHICAGO TERMINAL RAILROAD COMPANY ET AL. Rates on roof tile, felt, wire, and nails from Chicago Heights, Ill., to Laurel, Miss. *O. M. Rogers* for complainant. November 10, 1911. Dismissed. Overcharge of \$25.25 refunded.

3668. ALABAMA LUMBER & EXPORT COMPANY v. CENTRAL OF GEORGIA RAILWAY COMPANY ET AL. Rates on lumber from Millville Junction, Fla., to Marshallville, Ga. *John J. Earle* for complainant. *M. P. Callaway* for C. of G. Ry. Co. January 17, 1912. Dismissed. Overcharge refunded as found in report of October 9, 1911. Unreported opinion No. 442.

3835. H. G. SCHNEIDER v. SOUTHERN PACIFIC COMPANY ET AL. Rates on hogs from Brawley, Cal., to El Paso, Tex. *Rufus Daniel* for complainant. December 4, 1911. Transferred to Special Reparation Docket for adjustment.

3838. HENRY F. KATH v. MOBILE & OHIO RAILROAD COMPANY ET AL. Rates on lake mussel shells from Richey, Miss., to New Orleans, La., for export to Hamburg, Germany. *Chas. D. Drayton* for complainant. *Frank W. Girathmey* for defendants. December 28, 1911. Transferred to Special Reparation Docket for adjustment.

3839. JOHN A. CRANSTON LUMBER COMPANY ET AL. v. NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY. Rates on shingles and plastering laths from Norfolk, Va., to Salisbury, Md. *Chas. D. Drayton* for complainant. *R. B. Cooke* and *T. H. Willcox* for defendant. January 20, 1912. Transferred to Special Reparation Docket for adjustment.

3868. PIERMONT PAPER COMPANY v. ERIE RAILROAD COMPANY. Rates on paper-box board and material for same between Piermont, N. Y., Jersey City, or Weehawken, N. J., and New York, N. Y.

Wm. A. Glasgow, jr., for complainant. *H. A. Taylor* and *T. H. Burgess* for defendants. December 2, 1911. Dismissed on motion of complainant.

3898. *WILLSON BROS. LUMBER COMPANY v. WESTERN MARYLAND RAILWAY COMPANY ET AL.* Rates on lumber from Hambleton, W. Va., to Wyano and Yukon, Pa. *Robert Allen* for complainant. *J. T. Hendricks*, *Henry Wolf Bikle* and *Geo. Stuart Patterson* for defendants. December 28, 1911. Transferred to Special Reparation Docket for adjustment.

3946. *HENRY F. KATH v. NEW ORLEANS & NORTH EASTERN RAILROAD COMPANY ET AL.* Rates on mussel shells from Spanish Fort and Holly Bluff, Miss., to Newark, N. J., and Richardson, Picayune, Spanish Fort, and Holly Bluff, Miss., to New Orleans, La. *Chas. D. Drayton* for complainant. *Frank W. Gwathmey* for defendants. January 22, 1912. Transferred to Special Reparation Docket for adjustment.

3950. *R. M. ROGAN v. VIRGINIA & SOUTHWESTERN RAILWAY COMPANY ET AL.* Rates on lumber from Church Hill, Tenn., to Johnson City, Tenn. *Chas. J. Rixey* for defendants. February 12, 1912. Dismissed for want of prosecution.

3972. *NORTHERN CALIFORNIA POWER COMPANY, CONSOLIDATED v. CHICAGO & ERIE RAILROAD COMPANY ET AL.* Rates on steam shovel on its own trucks from Marion, Ohio, to Red Bluff, Cal. *J. O. Bracken* for complainant. *Geo. D. Squires* for defendants. December 28, 1911. Transferred to Special Reparation Docket for adjustment.

4007. *BRIDGEMAN-RUSSELL COMPANY v. WESTERN EXPRESS COMPANY.* Dairy products to and from Duluth, Holdingford, and Pierz, Minn. *B. M. Ruse* and *Francis W. Sullivan* for complainant. *W. H. Burr* for defendant. December 18, 1911. Dismissed. Overcharge refunded.

4085. *M. HAMM COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.* Rates on phosphate rock from Mt. Pleasant, and Siglo, Tenn., to Washington Court House, Ohio. *Thompson & Van Sant* for complainant. *A. S. Brandeis*, *W. G. Dearing*, *Benj. S. Warren*, *A. P. Burgwin*, *Edw. Barton*, and *M. R. Waite* for defendants. November 6, 1911. Reparation of \$1,768.69 awarded in accordance with rates found reasonable.

4097. *SOUTHWESTERN BRICK COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Rates on brick from Cherryvale, Kans., to Milan, Mo. *Fred Relgen* for complainant. *T. J. Norton*, *A. A. Hurd*, *J. R. Koontz*, and *R. B. Scott* for defendants. March 4, 1912. Dismissed. Complainant not proper party to prosecute for reparation.

4133. **NORTHERN COAL & COKE COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.** Rates on coal from Pinnacle Mine, Oak Creek, Colo. *Blood, Bartels & Brancroft* for complainant. *E. E. Whitted, Hughes & Dorsey, E. I. Thayer, J. O. Dier,* and *W. F. Dickinson* for defendants. December 12, 1911. Dismissed on motion of complainant.

4144. **AMERICAN MILLING COMPANY v. LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY ET AL.** Rates on bags from Owensboro, Ky., to Superior, Wis., and Duluth, Minn. *Frank T. Liddy* for complainant. *R. B. Scott, Geo. H. Crosby,* and *W. A. Northcutt* for defendants. March 12, 1912. Transferred to Special Reparation Docket for adjustment.

4177. **ATLANTIC REFINING COMPANY v. PENNSYLVANIA RAILROAD COMPANY ET AL.** Rates on petroleum from Philadelphia, Pa., to Gloversville, N. Y. *Henry S. Mustin* for complainant. December 28, 1911. Transferred to Special Reparation Docket for adjustment.

4178. **UNDERWOOD VENEER COMPANY v. CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.** Rates on birch veneer from Wausau, Wis., to Muskegon, Mich. *O. M. Rogers* for complainant. *C. C. Wight* and *F. P. Eymann* for defendants. January 18, 1912. Transferred to Special Reparation Docket for adjustment.

4179. **ATLANTIC REFINING COMPANY v. PENNSYLVANIA RAILROAD COMPANY.** Rates on naphtha and fuel oil from Philadelphia, Pa., to Camden, N. J. *Henry S. Mustin* for complainant. December 28, 1911. Transferred to Special Reparation Docket for adjustment.

4183. **CHESNUTT LUMBER COMPANY v. GEORGIA, FLORIDA & ALABAMA RAILWAY COMPANY ET AL.** Rates on lumber from Carabelle, Fla., to Harrisonburg, Va. *John R. Walker* for complainant. *A. H. Gleason, Hawes & Pottle, F. W. Grathmey,* and *R. Walton Moore* for defendants. December 28, 1912. Transferred to Special Reparation Docket for adjustment.

4210. **CHATTANOOGA BOILER & TANK COMPANY v. NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL.** Rates on tower and tank material from Chattanooga, Tenn., to Marietta, Ga. *Arthur B. Hays* for complainant. January 17, 1912. Transferred to Special Reparation Docket for adjustment.

4217. **AMERICAN AGRICULTURAL CHEMICAL COMPANY (Bowker Fertilizer Works) v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.** Rates on fertilizer from Cincinnati, Ohio, to Bowling Green, Ky. *C. J. Pitt* for complainant. *A. H. Brandeis* for defendant. December 28, 1911. Transferred to Special Reparation Docket for adjustment.

4218. ABRAHAM D. RADINSKY *v.* COLORADO & SOUTHERN RAILWAY COMPANY ET AL. Rates on rags from Denver, Colo., to St. Johns, Oreg. *Carle Whitehead* and *A. L. Vogl* for complainant. *J. M. Cates, F. C. Dillard, Hughes & Dorsey, E. I. Thayer, E. N. Clark,* and *J. G. McMurry* for defendants. January 9, 1912. Reparation of \$202.05 awarded following Unreported Opinion No. 492, Docket No. 3869.

4224. EDISON PORTLAND CEMENT COMPANY *v.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL. Rates on Portland cement from New Village, N. J., to various other points in New Jersey. *F. C. Morris* for complainant. January 22, 1912. Dismissed on motion of complainant.

4226. T. B. & ALLEN HOLDER *v.* SOUTHERN PACIFIC COMPANY ET AL. Misrouting of shipment of goats from Lordsburgh, N. Mex., to Kansas City Mo. *D. T. Mason* for complainant. *Hughes & Dorsey* and *E. I. Thayer* for defendants. December 11, 1911. Dismissed. Allegation of misrouting not sustained.

4250. AMERICAN HARDWOOD LUMBER COMPANY ET AL. *v.* MISSOURI PACIFIC RAILWAY COMPANY ET AL. Rates on lumber from Arkansas and Louisiana points to eastern destinations. *Blair, Drayton & Hillyer*, by *Chas. Sherman Hillyer*, for complainant. *E. H. Calef* and *D. P. Connell* for defendants. January 9, 1912. Dismissed. Complaint satisfied.

4282. HOBART ELECTRIC MANUFACTURING COMPANY *v.* CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL. Rates on butchers' meat choppers and grocers' coffee mills from Troy, Ohio, to San Francisco. *W. W. Brackett* for complainant. *W. F. Dickinson, F. C. Dillard, C. W. Durbrow, Geo. D. Squires, O. E. Butterfield,* and *Clyde Brown* for defendants. January 17, 1912. Dismissed on motion of complainant.

4293. PARLIN & ORDENDORFF COMPANY *v.* WASHINGTON RUN RAILROAD COMPANY ET AL. Rates on coke from Layton, Pa., to Canton, Ohio. *W. M. Caves* for complainant. *R. B. Scott, G. H. Crosby,* and *W. C. Coleman* for defendants. December 23, 1911. Dismissed. Straight overcharge refunded.

4296. E. B. WELCH COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL. Rates on mattresses from El Paso, Tex., to Las Vegas, Santa Fe, and Albuquerque, N. Mex. *Rufus B. Daniel* for complainant. *Robert Dunlap, T. J. Norton,* and *James L. Coleman* for defendants. December 11, 1911. Dismissed. Complaint satisfied.

4332. CLINTON SUGAR REFINING COMPANY *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY. Rates on glucose and other corn

products from stations in Illinois and Iowa on C., B. & Q. R. R. Co. to points in Illinois, Kentucky, and Missouri. *J. A. O'Halloran* for complainant. *R. B. Scott* and *Geo. H. Crosby* for defendants. March 4, 1912. Dismissed. Complaint satisfied.

4371. SOUTHWESTERN MISSOURI MILLERS' CLUB *v.* MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL. Allowance for repairing cars for shipments of flour in sacks. *W. H. Marshall* for complainant. *J. W. Allen*, *Fred H. Wood*, *T. J. Norton*, *F. C. Maegley*, *I. W. Moore*, *F. H. Moore*, and *J. R. Mills* for defendants. January 4, 1912. Dismissed on motion of complainant.

4381. R. J. DOWD KNIFE WORKS *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL. Rates on grindstones from Peninsula, Ohio, to Beloit, Wis. *F. A. Larish* for complainant. *C. C. Wight* and *Edu. M. Hyzer* for defendants. March 7, 1912. Transferred to Special Reparation Docket for adjustment.

4386. ROLLO B. JACKSON *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY. Rates on live poultry from Newton, Iowa, to Chicago, Ill. *Edu. P. Malmberg* for complainant. November 25, 1911. Dismissed. Straight overcharge of \$19.38 refunded.

4398. NATIONAL PICKLE & CANNING COMPANY *v.* MOBILE & OHIO RAILROAD COMPANY. Rates on mixed carload of pickles, mustard, catsup, vinegar, olive oil, and honey from St. Louis, Mo., to Birmingham, Ala. *O. M. Rogers* for complainant. November 23, 1911. Dismissed. Straight overcharge of \$52.80 refunded.

4405. BLACK-POLLAK IRON COMPANY *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY. Rates on old rails and track fastenings from St. Louis, Mo., to Clarks, La. *A. D. Davis* for complainant. December 21, 1911. Dismissed. Straight overcharge of \$307.12 refunded.

4422. MASTERS LUMBER COMPANY *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL. Rates on lumber from Hazen, Ala., to St. Louis, Mo., reconsigned to Moline and East Moline, Ill. *D. M. Goodwyn* and *C. W. Calligan* for defendants. March 4, 1912. Dismissed for want of prosecution.

4443. BEECHER & BARR *v.* ATLANTIC COAST LINE RAILROAD COMPANY ET AL. Rates on lumber from Central Junction, Ga., to Falconer, N. Y. *John R. Walker* for complainant. *Henry Wolf Riklo* and *Geo. Stuart Patterson* for defendants. December 21, 1911. Dismissed. Overcharge of \$37.44 refunded.

4457. MERIDIAN FERTILIZER FACTORY *v.* MOBILE & OHIO RAILROAD COMPANY ET AL. Rates on fertilizer from Meridian, Miss., to points in Alabama. *S. Eastland* for complainant. *C. B. Northrop* and *R. Walton Moore* for defendants. January 22, 1912. Dismissed on motion of complainant. Complaint satisfied.

4523. *RIVERSIDE MILLS v. CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY ET AL.* Rates on cotton-factory sweepings from Langdale, Ala., to Augusta, Ga. *R. J. Southall* for complainant. *N. D. Denson, Rosser & Brandon*, and *R. Walton Moore* for defendants. March 15, 1912. Transferred to Special Reparation Docket for adjustment.

4532. *HOBBS & KNIGHT v. ATLANTIC COAST LINE RAILROAD COMPANY.* Rates on vehicle parts and material from Ohio River points to Tampa, Fla. *J. D. Hobbs* for complainant. February 1, 1912. Dismissed on motion of complainant. Complaint satisfied.

4568. *THE CABLE COMPANY v. CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.* Rates on pianos from St. Charles, Ill., to Atlanta, Ga.; Jacksonville, Fla.; Birmingham, Ala.; Knoxville, Tenn.; and Macon, Ga. *O. M. Rogers* for complainant. *A. S. Brandeis, W. W. Proctor, R. Walton Moore, C. C. Wight*, and *Edw. M. Hyzer* for defendants. December 23, 1911. Dismissed on motion of complainant.

4629. *DANVILLE LUMBER & MANUFACTURING COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.* Rates on lumber from Chapin and White Rock, S. C., to Danville, Va. *H. E. Hanes* for complainant. March 1, 1912. Dismissed on motion of complainant.

22 I. C. C. Rep.

REPARATION CASES DISPOSED OF BY THE COMMISSION IN
FORMAL BUT UNREPORTED DECISIONS DURING THE TIME
COVERED BY THIS VOLUME.

3693 (U. R. No. 482). THOMPSON, THAYER & McCOWEN *v.* ILLINOIS CENTRAL RAILROAD COMPANY.—Unreasonable rates on logs from points in Mississippi to Evansville, Ind. *G. O. Worland* for complainants. *A. P. Humburg* for defendant. November 7, 1911. Reparation awarded for \$1,667.96.

3675 (U. R. No. 483). BLACKWELL MILLING & ELEVATOR COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Unreasonable rate on bran from Blackwell, Okla., to Tyler, Tex. *W. C. Tetirick* for complainant. *Robert G. Merrick* and *R. B. Cunningham* for defendants. November 7, 1911. Reparation awarded for \$58.50.

4044 (U. R. No. 484). SALLISAW COTTON OIL COMPANY *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.—Unreasonable rate on burlap bags from New Orleans, La., to Sallisaw, Okla. *J. H. Wagner* for complainant. *C. C. P. Rausch* for defendants. December 5, 1911. Reparation awarded for \$81.42.

3793 (U. R. No. 485). PARAGOULD LUMBER COMPANY *v.* MISSOURI PACIFIC RAILWAY COMPANY ET AL.—Alleged unreasonable rate on shingles from Paragould, Ark., to Blanket, Tex. *C. Kingsley Smith* for complainant. *C. C. P. Rausch* for defendants. December 5, 1911. Complaint dismissed.

3480 (U. R. No. 486). DAWSON BROTHERS *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Unreasonable rates on potatoes from De Soto Kans., to Ardmore, Okla. *J. H. Johnston* for complainants. *R. G. Merrick* for defendants. December 5, 1911. Reparation awarded for \$19.69.

3830 (U. R. No. 487). PAONIA PACKING COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Unreasonable rates on tin cans from Pueblo, Colo., to Paonia, Colo. *M. D. Vincent* for complainant. *Robert Dunlap*, *D. L. Meyers*, *W. T. Hughes*, *C. C. Wright*, *F. C. Dillard*, *C. C. Dorsey*, *E. N. Clark*, and *J. G. McMurray* for defendants. December 5, 1911. Reparation awarded for \$309.96.

3862 (U. R. No. 488). BURNO *v.* MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.—Unreasonable rate on emigrant movables from

Council Grove, Kans., to Eads, Colo. *L. E. Langdon* for complainant. *J. R. Duckworth* for defendant. December 5, 1911. Reparation awarded for \$61.62.

4055 (U. R. No. 489). *LINDSAY BROTHERS v. GRAND RAPIDS & INDIANA RAILWAY COMPANY ET AL.*—Unreasonable joint rates on steam boilers from Kalamazoo, Mich., to Fredonia, Wis. *H. F. Lindsay* for complainants. No appearances for defendants. December 5, 1911. Award of reparation deferred.

2181 (U. R. No. 490). *MASON FRUIT JAR COMPANY v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.*—Unreasonable rate on glass fruit jars from Coffeyville, Kans., to Kimball, Nebr. *J. S. Casey* for complainant. *N. H. Loomis, F. C. Dillard, James Hagerman,* and *Joseph M. Bryson* for defendants. December 5, 1911. Reparation awarded for \$29.20.

3794 (U. R. No. 491). *DORAN & COMPANY v. OHIO & KENTUCKY RAILWAY COMPANY ET AL.*—Alleged unreasonable rate on crossties from points in Kentucky to Brookville, Ohio. *James R. Davidson* for complainants. *Maxwell & Ramsey, Joseph L. Lockner,* and *Brandon & Lees* for defendants. December 5, 1911. Complaint dismissed.

3869 (U. R. No. 492). *RADINSKY v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rate on rags from Denver Colo., to St. Johns, Oreg. *Carle Whitehead* and *Albert L. Vogl* for complainant. *E. E. Whitted, A. S. Brooks, F. C. Dillard, H. A. Scandrett, L. T. Wilcox, C. C. Dorsey, E. T. Thayer,* and *E. N. Clark* for defendants. December 5, 1911. Reparation awarded for \$183.33.

3895 (U. R. No. 493). *PLATTE BROTHERS ET AL. v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on potatoes from Langford, S. Dak., to Kansas City, Mo. *P. W. Dougherty* for complainants. No appearance for defendant. December 5, 1911. Reparation awarded for \$47.61.

3953 (U. R. No. 494). *O'HALLORAN & JACOBS v. BANGOR & ARROSTOCK RAILROAD COMPANY ET AL.*—Alleged misrouting of shipment of roofing slate from Monson, Me., to North Tonawanda, N. Y. *James G. Marks* for complainants. *Robert Main* for defendants. December 5, 1911. Award of reparation deferred.

4047 (U. R. No. 495). *TUTHILL SPRING COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.*—Unreasonable rates on wagon springs from Chicago, Ill., to Racine Junction, Wis. *G. M. Stephen* for complainant. *C. C. Wright* and *William Ellis* for defendants. December 11, 1911. Reparation awarded for \$27.17.

3061 (U. R. No. 496). *RIVERS BROTHERS COMPANY v. WELLS FARGO & COMPANY.* Alleged unreasonable rates and delay in transit from Los Angeles, Cal., to points in Nevada, Utah, Arizona, Texas, and

New Mexico. *E. B. Rivers* for complainant. *Harry S. Marx* for defendant. December 11, 1911. Complaint dismissed.

3429 (U. R. No. 497). *ANHEUSER-BUSCH BREWING ASSOCIATION v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.*; No. 3430, *SAME v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL.*; No. 3682, *SAME v. WABASH RAILROAD COMPANY ET AL.*—Alleged unreasonable rates on beer and beer packages from St. Louis, Mo., to Colorado common points. *R. Muehlberg* for complainant. *Louis Feickert* for William J. Lemp Brewing Company, intervener. *James C. Jeffery*, *Herbert J. Campbell*, *George H. Crosby*, *Robert B. Scott*, *T. J. Norton*, *D. L. Meyers*, *N. S. Brown*, and *W. H. Wylie* for defendants. December 11, 1911. Reparation in part awarded for \$111.75.

3896 (U. R. No. 498). *MOORE & COMPANY v. SEABOARD AIR LINE RAILWAY ET AL.*—Unreasonable rate on cotton from Maxton, N. C., to Baltimore, Md. *H. L. Goss* for complainant. *R. Walton Moore* and *Henry Wolf Bikle* for defendants. December 11, 1911. Reparation awarded for \$166.22.

3996 (U. R. No. 499). *BROWNE GRAIN COMPANY v. MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.*—Unreasonable rates on baled corn husks from points in Louisiana to points in Texas. *E. P. Browne* for complainants. *S. G. Reed*, *J. L. West*, *T. B. McCormick*, *C. P. Dowlin*, and *H. L. Redfield* for defendants. December 11, 1911. Reparation awarded for \$800.15.

4023 (U. R. No. 500). *ELISINORE CATTLE COMPANY v. PACIFIC EXPRESS COMPANY ET AL.*—Unreasonable rate on jack from Pleasant Hill, Mo., to Marathon, Tex. *Charles Rogan* for complainant. *T. N. Edgell* and *F. L. Selleck* for defendants. December 5, 1911. Reparation awarded for \$124.47.

4005-4102 (U. R. No. 501). *GUND BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on beer from La Crosse, Wis., to Tyndall, S. Dak. *H. A. Walter* for complainant. *J. T. Conley* for defendant. December 5, 1911. Reparation awarded for \$1,350.94.

4054 (U. R. No. 502). *STANDARD OIL COMPANY v. ELGIN, JOLIET & EASTERN RAILWAY COMPANY ET AL.*—Unreasonable rate on petroleum and gasoline from Whiting, Ind., to Columbus, Wis. *Edgar Bogardus* for complainant. *William Ellis* for defendant. December 5, 1911. Reparation awarded for \$133.83.

3290 (U. R. No. 503). *GODFREY & SONS COMPANY v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.*—Alleged unreasonable rates on apples from Holley, N. Y., to Calumet and Hancock, Mich. *George W. Wadsworth* for complainant. *James Robertson* for defendants. January 8, 1912. Complaint dismissed.

3366 (U. R. No. 504). **ELECTRIC MALTING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Alleged unreasonable rates on malt from Minneapolis, Minn., to Grand Rapids, Mich., and La Crosse, Wis. *James B. Orth* for complainant. *F. G. Wright* and *R. B. Scott* for defendants. January 8, 1912. Complaint dismissed.

4027 (U. R. No. 505). **GAMBLE-ROBINSON COMMISSION COMPANY v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL.**—Charges for car detention improper. *Lorenzo A. Knudsen* for complainant. *Geo. W. Seevers* for defendants. January 8, 1912. No award of reparation.

3305 (U. R. No. 506). **GAMBLE-ROBINSON COMMISSION COMPANY ET AL. v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.**—Unreasonable rate on strawberries from Mountainburg and Van Buren, Ark., to Minneapolis, Minn. *Leonard Brisley* for complainants. *F. H. Wood, Edward A. Haid, Richard L. Kennedy, James C. Jeffery, Herbert Campbell,* and *Hale Holden* for defendants. January 8, 1912. Reparation awarded for \$105.84.

3758 (U. R. No. 507). **ARKANSAS FERTILIZER COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.**—Unreasonable rate on muriate of potash from Locust Point, Md., to Little Rock, Ark. *E. L. McHancy* for complainant. *Thomas S. Buzbee* for defendants. January 8, 1912. Reparation awarded for \$106.40.

3764 (U. R. No. 508). **SUNDERLAND BROTHERS COMPANY v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.**—Unreasonable rate on cement from Chanute and Iola, Kans., to Wood River and Elm Creek, Nebr. *C. E. Childe* for complainant. *C. B. Matthai* for defendant. January 8, 1912. Reparation awarded for \$33.25.

3906 (U. R. No. 509). **FORT SMITH WHOLESALE GROCERY COMPANY v. FORT SMITH & WESTERN RAILROAD COMPANY ET AL.**—Unreasonable rate on canned tomatoes from Kenton, Del., to Fort Smith, Ark. *Winchester & Martin* for complainant. *W. P. Lewis* for defendants. January 8, 1912. Reparation awarded for \$201.

4086 (U. R. No. 510). **FOLLMER & COMPANY v. GREAT NORTHERN RAILWAY COMPANY ET AL.**—Alleged unreasonable reconsignment charges on shingles from Van Horn, Wash., to Menasha, Wis. *C. C. Follmer* for complainant. *H. H. Brown* for defendants. January 15, 1912. Complaint dismissed.

4012 (U. R. No. 511). **MICHIGAN AMMONIA WORKS v. MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY ET AL.**—Unreasonable rate on ammoniacal liquor from Minneapolis, Minn., to St. Louis, Mo. *M. G. Leakey* for complainant. No appearance for defendant. January 8, 1912. Reparation awarded for \$98.16.

4093 (U. R. No. 512). **STANDARD OIL COMPANY v. KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.**—Unreasonable rates on petro-

leum products from Sugar Creek, Mo., to points in South Dakota. *R. H. McElroy* and *Edgar Bogardus* for complainant. *R. B. Scott* and *William Ellis* for defendants. January 8, 1912. Reparation awarded for \$178.34.

4134 (U. R. No. 513). *STANDARD OIL COMPANY v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY*.—Unreasonable rate on crude oil from Duncanville, Ill., to Fortville, Ind. *Edgar Bogardus* and *R. M. McElroy* for complainant. *D. P. Connell* for defendant. January 8, 1912. Reparation awarded for \$124.56.

4148 (U. R. No. 514). *KELLOGG SWITCHBOARD & SUPPLY COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL*.—Unreasonable rate on telegraph poles from Wilson, Mich., to Seymour, Iowa. *G. M. Stephen* for complainant. *W. F. Dickinson* and *Wallace T. Hughes* for defendants. January 15, 1912. Reparation awarded for \$12.11.

4314. (U. R. No. 515). *AMERICAN MILLING COMPANY v. LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY ET AL*.—Unreasonable rate on mill feed from Owensboro, Ky., to Barcroft, Va. *Frank T. Liddy* for complainant. *R. Walton Moore* and *E. C. Blanchard* for defendants. January 15, 1912. Reparation awarded for \$14.

3859 (U. R. No. 516). *SWIFT & COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL*.—Unreasonable rate on ground tankage from South Omaha, Nebr., to Oaklawn plantation, La. *Albert & Henry Veeder* and *Maurice Weigle* for complainant. *R. B. Scott*, *S. W. Moore*, *F. C. Dillard*, and *L. T. Wilcox* for defendants. January 15, 1912. Reparation awarded for \$303.

4319 (U. R. No. 517). *CONTINENTAL OIL COMPANY v. BALTIMORE & OHIO CHICAGO TERMINAL RAILROAD COMPANY ET AL*.—Unreasonable rate on tin oil cans from Whiting, Ind., to Ogden and Salt Lake City, Utah. *W. H. Ferguson* for complainant. *E. N. Clark*, *J. G. McMurray*, *E. E. Whitted*, *J. M. Cates*, *E. I. Thayer*, *Hughes & Dorsey*, and *F. C. Dillard* for defendants. January 15, 1912. Reparation awarded for \$874.72.

4172 (U. R. No. 518). *MILLER & COMPANY v. GRAND RAPIDS & INDIANA RAILWAY COMPANY ET AL*.—Unreasonable rates on potatoes from Sand Lake and Kent City, Mich., to points in Louisiana and Texas. *J. E. Robinson* for complainants. *A. P. Humburg*, *D. P. Connell*, *R. P. Paterson*, *S. H. West*, *Roy F. Britton*, *W. F. Dickinson*, and *Wallace T. Hughes* for defendants. January 15, 1912. Reparation awarded for \$85.75.

4392 (U. R. No. 519). *BOYD v. OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY ET AL*.—Unreasonable rate on emigrant movables from Garfield, Wash., to Arco, Idaho. *Public Service Commission of Washington* for complainant. *F. C. Dillard* and *A. C.*

670 REPARATION CASES DISPOSED OF IN UNREPORTED DECISIONS.

Spencer for defendants. January 15, 1912. Reparation awarded for \$150.15.

2856 (U. R. No. 520). **BLOCK-POLLAK IRON COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY.**—Unreasonable rate on scrap iron from Deering station to Wood Street station interchange (Chicago, Ill.). *Stein, Mayer & Stein*, by *Hue Rosenblum* and *A. D. Davis* for complainant. *C. C. Wright* and *F. P. Eymann* for defendant. February 5, 1912. Reparation awarded for \$100.84.

3814 (U. R. No. 521). **MACK MANUFACTURING COMPANY v. PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; METROPOLITAN PAVING BRICK COMPANY v. WHEELING & LAKE ERIE RAILROAD COMPANY ET AL.; C. P. MAYER BRICK COMPANY v. PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.**—Alleged unreasonable rates on paving brick under former Chicago-New York basis. *Alvin M. Higgins* for complainants. *A. P. Burquin* and *William C. Coleman* for defendants. February 5, 1912. Complaints dismissed.

4168 (U. R. No. 522). **HARVEY & COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.**—Unreasonable rates on fuel wood from Mesick, Mich., to Melrose Park and North Chicago, Ill. *Thomas L. Stitt* for complainant. *C. C. Wright* for defendants. February 5, 1912. Reparation awarded for \$64.64.

4221 (U. R. No. 523). **DOWD KNIFE WORKS v. MARIETTA, COLUMBUS & CLEVELAND RAILROAD COMPANY ET AL.**—Unreasonable rate on grindstones from Fleming, Ohio, to Beloit, Wis. *George W. Wadsworth* for complainant. No appearances for defendants. February 5, 1912. Reparation awarded for \$22.41.

4280 (U. R. No. 524). **HILL NURSERY COMPANY, INCORPORATED, v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.**—Unreasonable rate on pine cones from Lewiston, Mich., to Dundee, Ill. *G. M. Stephen* for complainant. *D. P. Connell* for defendants. February 5, 1912. Reparation awarded for \$7.44.

3861 and 3901 (U. R. No. 525). **RENNERT-MILLETTE COMPANY v. GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY ET AL.; HEARNE & DE LESDERNIER v. SAME.**—Unreasonable rates on cotton from concentration points in Texas to points beyond. *F. Rennert* and *R. W. Hearne* for complainants. *F. C. Dillard, Baker, Botts, Parker & Garwood, William F. Herrin*, and *J. R. Christian* for defendants. February 5, 1912. Reparation awarded for \$1,426.61.

3905 (U. R. No. 526). **ARIZONA RAILWAY COMMISSION, IN BEHALF OF B. F. FAUST v. EL PASO & SOUTHWESTERN COMPANY ET AL.**—Unreasonable rate on secondhand bottles from Bisbee, Ariz., to Los Angeles, Cal. *George J. Stoneman* for complainant. *Eugene Fox* and *George D. Squires* for defendants. February 5, 1912. Reparation awarded for \$494.76.

3915, 4035 (U. R. No. 527). **WELLS-HIGMAN COMPANY v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.; SAME v. GRAND RAPIDS & INDIANA RAILWAY COMPANY ET AL.**—Unreasonable rates on fruit baskets from Memphis, Tenn., to points in Texas. *O. M. Rogers* for complainant. *Roy F. Britton, J. D. Watson, F. H. Wood, and C. B. Cardy* for defendants. February 5, 1912. Reparation awarded for \$506.09.

3978 (U. R. No. 528). **CHANUTE REFINING COMPANY ET AL. v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.**—Unreasonable rate on petroleum products from Chanute, Kans., to Falls City, Nebr. *C. D. Chamberlain* for complainants. *T. J. Norton, R. B. Scott, Herbert J. Campbell, and Henry G. Herbel* for defendants. February 5, 1912. Reparation awarded for \$722.08.

4029 (U. R. No. 529). **CARPENTER v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.**—Alleged unreasonable rates on bridge iron from St. Louis, Mo., to points in Iowa and South Dakota. *G. M. Stephen* for complainant. *C. C. P. Rausch, W. F. Dickinson, Wallace T. Hughes, C. C. Wright, R. B. Scott, and N. S. Brown* for defendants. February 5, 1912. Complaint dismissed.

3784 (U. R. No. 530). **KENNEDY & COMPANY v. VIRGINIAN RAILWAY COMPANY ET AL.**—Unreasonable rates on oak lumber from Burgess siding, W. Va., to Norfolk, Va. *Montgomery E. P. Christie* for complainant. *H. T. Hall and S. M. Adsit* for defendants. February 5, 1912. Reparation awarded for \$61.46.

3788 (U. R. No. 531). **STRASBURG STEAM FLOURING MILLS v. SOUTHERN RAILWAY COMPANY.**—Unreasonable rate on grain from Strasburg, Va., to various points in North and South Carolina. *Walton & Walton* for complainant. *Claudian B. Northrop* for defendant. March 4, 1912. Award of reparation withheld.

3819 (U. R. No. 532). **GULF COAST COTTON OIL & REFINING COMPANY v. NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY ET AL.**—Unreasonable rates on cottonseed oil from New Roads, La., to Gulfport, Miss. *Adolph Steinhardt* for complainant. *J. L. Hawley, B. E. Eaton, V. Schaffenburg, N. W. Proctor, and W. F. Braggins* for defendants. March 4, 1912. Reparation awarded for \$316.42.

3979 (U. R. No. 533). **STRICKLIN & COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.**—Unreasonable rates on crossties from Stavix and Dryden, Va., and Dortha, Ky., to Cincinnati, Ohio. *J. H. Stricklin* for complainant. *W. G. Dearing* for defendant. March 4, 1912. Reparation awarded for \$3,206.47.

4022 (U. R. No. 534). **JEFFERSON LUMBER COMPANY v. ATLANTA, BIRMINGHAM & ATLANTIC RAILROAD COMPANY ET AL.**—Unreasonable rate on lumber from Roberson siding, Ala., to Chattanooga, Tenn. *Leland Scott* for complainant. *M. P. Callaway* for defendants. March 4, 1912. Reparation awarded for \$14.80.

4050 and 4057 (U. R. No. 535). **GOOCH LUMBER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.; NORMAN LUMBER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.**—Unreasonable rates on ties from Lewisburg and East Bernstadt, Ky., to Louisville, Ky. *J. V. Norman, G. O. Milliken, and Hines & Norman*, by *J. V. Norman*, for complainants. *W. G. Dearing and N. W. Proctor* for defendants. March 4, 1912. Reparation awarded for \$584.20.

4059 (U. R. No. 536). **HUNT v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.**—Unreasonable rates on lumber from Lucius, Cherry Log, White Path, and Searcy, Ga., to Chattanooga, Tenn. *Arthur B. Hayes* for complainant. *Charles J. Rixey, jr., and Nelson W. Proctor* for defendants. March 4, 1912. Reparation awarded for \$139.09.

4092 (U. R. No. 537). **JANESVILLE BARB WIRE COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.**—Unreasonable rate on wire fencing from Janesville, Wis., to Williamsville, Mo. *George W. Wadsworth* for complainant. *C. C. Wright* for defendants. March 4, 1912. Reparation awarded for \$6.84.

4109 (U. R. No. 538). **EDISON PORTLAND CEMENT COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.**—Alleged unreasonable rate on Portland cement from New Village, N. J., to points in New York. *F. C. Morris* for complainant. *Douglas Swift, A. S. Leary, and Ernest S. Ballard* for defendants. March 4, 1912. Complaint dismissed.

4110 (U. R. No. 539). **KURTH COMPANY v. CHICAGO MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Alleged unreasonable rate on empty malt sacks from Albuquerque, N. Mex., to Columbus, Wis. *G. M. Stephen* for complainant. *William Ellis, D. L. Meyers, and J. L. Coleman* for defendants. March 4, 1912. Complaint dismissed.

4136. (U. R. No. 540). **DEEVES LUMBER COMPANY v. CHICAGO & ILLINOIS WESTERN RAILROAD ET AL.**—Unreasonable rates on lumber from Greenville, Mo., to Hawthorne, Ill. *I. W. Prectorius* for complainant. *Edwin Terrilliger, jr.* for defendants. March 4, 1912. Reparation awarded for \$53.93.

4152 (U. R. No. 541). **GREER-WILKINSON LUMBER COMPANY v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.**—Unreasonable rates on gum lumber from Durnell, Mo., to Cairo, Ill. *Blair, Drayton & Hillier* for complainant. *Fred H. Wood* for defendants. March 4, 1912. Award of reparation withheld.

4165 (U. R. No. 542). **UNION TANNING COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.**—Unreasonable rate on bark from Probst, Tenn., to Chattanooga, Tenn. *W. R. Campbell* for complainant. *Nelson W. Proctor* for defendants. March 4, 1912. Reparation awarded for \$11.55.

4174 (U. R. No. 543). *CARPENTER-COOK COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.*—Unreasonable rate on coffee from New Orleans, La., to Menominee, Mich. *George W. Wadsworth* for complainant. *D. P. Connell, William A. Northcutt, and William Ellis* for defendants. March 4, 1912. Reparation awarded for \$64.74.

4194 (U. R. No. 544). *HATHWAY LUMBER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.*—Unreasonable rates on lumber from Orrville, Ala., to Troy, N. Y. *James B. Wescott* for complainant. *D. P. Connell and W. A. Northcutt* for defendants. March 4, 1912. Reparation awarded for \$100.60.

4206 (U. R. No. 545). *HARMOUNT v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.*—Unreasonable rate on crossties from points in Kentucky to Louisville, Ky., and Cincinnati, Ohio. *Timmons Harmount* for complainant in person. No appearance for defendants. March 4, 1912. Reparation awarded for \$870.80.

4207 (U. R. No. 546). *CHATTANOOGA MEDICINE COMPANY v. PENNSYLVANIA RAILROAD COMPANY ET AL.*—Alleged unreasonable rate on tale from Toms River, N. J., to Chattanooga, Tenn. *Arthur B. Hayes* for complainant. *Charles J. Rixey, jr., and Nelson Proctor* for defendants. March 4, 1912. Complaint dismissed.

4267 (U. R. No. 547). *ANHEUSER-BUSCH BREWING ASSOCIATION v. EL PASO & SOUTHWESTERN COMPANY ET AL.*—Unreasonable rate on empty beer packages from Bisbee, Ariz., to Forsythe junction, Mo. *R. Muehlberg* for complainant. No appearance for defendants. March 4, 1912. Reparation awarded for \$596.44.

4272 (U. R. No. 548). *T. WALTER HARDY, JR., v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.*—Unreasonable rate on logs from Bells, Tenn., to Nashville, Tenn. *Campbell Pilcher and Perkins Barter* for complainant. *N. W. Proctor* for defendant. March 4, 1912. Award of reparation withheld.

4344 (U. R. No. 549). *BAIRD LUMBER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.*—Unreasonable rate on lumber from Galliver, Fla., to Springfield, Tenn. *John R. Walker* for complainant. No appearance for defendant. March 4, 1912. Reparation awarded for \$7.40.

4373 (U. R. No. 550). *AMERICAN HARDWOOD LUMBER COMPANY v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rate on lumber from St. Louis, Mo., to Guaymas, Mexico. *John R. Walker* for complainant. *Henry G. Herbel* for defendants. March 4, 1912. Reparation awarded for \$251.98.

NOTE.—The amount of reparation awarded in the above cases aggregates \$17,085.62.

REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF
THE COMMISSION DURING THE TIME COVERED BY THIS
VOLUME.

2398. MURPHY BROTHERS *v.* NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, and 3615, MURPHY BROTHERS *v.* NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY. December 11, 1911. Reparation of \$443, with interest, to Murphy Brothers, by New York Central & Hudson River Railroad Company, for unreasonable track-storage charges at New York, N. Y.

2977. H. ROSENBLATT & SONS *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL. December 12, 1911. Reparation of \$5.85, with interest, to H. Rosenblatt & Sons, by Chicago, Milwaukee & St. Paul Railway Company and the Pennsylvania Company, on shipments of triplex cloth from Fort Wayne, Ind., to Beloit, Wis., on account of excessive rate.

1916. CALIFORNIA COMMERCIAL ASSOCIATION *v.* WELLS FARGO & COMPANY. December 13, 1911. Reparation of \$9,161.77, with interest, to California Commercial Association, by Wells Fargo & Company, on various shipments of merchandise from New York, N. Y., to San Francisco, Cal., on account of excessive rate.

2588. CROSBY & MEYERS *v.* GOODRICH TRANSIT COMPANY ET AL. January 9, 1912. Reparation of \$10.18, with interest, to Crosby & Meyers, by Cleveland, Cincinnati, Chicago & St. Louis Railway Company, for drayage charge caused by misrouting of shipment of cheese from Kewaunee, Wis., to Louisville, Ky.

2398. MURPHY BROTHERS *v.* NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, and 3615, MURPHY BROTHERS *v.* SAME. February 5, 1912. Reparation of \$73, with interest, to Murphy Brothers, by New York Central & Hudson River Railroad Company, for unreasonable track-storage charges at New York, N. Y.

3378. NATIONAL LEAGUE OF COMMISSION MERCHANTS OF THE UNITED STATES *v.* ATLANTIC COAST LINE RAILROAD COMPANY ET AL. February 28, 1912. Reparation of \$160.09, with interest; \$136.35, with interest; \$42.77, with interest; \$30, with interest; and \$8.40, with interest, to A. F. Young & Company; \$13.60, with interest; \$9.60, with interest; and \$21, with interest, to B. H. Bean; \$13.60, with interest, and \$38.40, with interest, to J. H. Gail; \$86.45, with interest, to Coward & Kendrick; \$16, with interest, to S. C. Focer; \$96, with

interest, and \$30.80, with interest, to Potter & Williams, by defendants, on shipments of cabbage, potatoes, and lettuce from points in South Carolina to Buffalo, N. Y., and Pittsburgh, Pa., on account of excessive rates.

4068. **McDONNELL & SONS v. CENTRAL VERMONT RAILWAY COMPANY ET AL.** March 12, 1912. Reparation of \$282.02, with interest, to McDonnell & Sons, by defendants, on shipments of granite from Barre, Vt., to Birmingham, Ala., on account of excessive rate.

3242. **J. B. FORD COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.** March 15, 1912. Reparation of \$13,144.23, with interest, to J. B. Ford Company, by defendants, on shipments of soda ash from Wyandotte, Mich., to various interstate destinations, on account of excessive rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$23,823.11.

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ABSORPTION OF SWITCHING CHARGES.

Absorption of switching charges on cars containing less-than-carload freight, in lots of 6,000 pounds or more, received from connecting carriers within switching limits, destined to carrier's freight houses or warehouses, and thence to points on its line, but refusing to absorb such switching charges on cars handled through its train yards, constitutes unjust discrimination. *Swift & Co. v. M. P. Ry. Co.* 385.

ADMINISTRATIVE RULING.

Rule 8 (a) Tariff Circular 18-A, directing that if a supplement to a tariff is issued which conflicts with a part of a previous supplement, which is not thereby canceled in full, that such newly issued supplement should specifically state the portion of the previous supplement intended thereby to be canceled; *Held*, To apply to successive supplements to the same tariff, as well as to other and different tariffs. *Veitch v. S. A. L. Ry.* 4.

Conference Ruling No. 239, entitling shipper to benefit of lower of conflicting rates, followed. *Ireland & Rollings v. St. L. & S. F. R. R. Co.*, 590 (592).

Conference rulings on transportation of company material cited and affirmed. *In re Transportation of Company Material*, 439.

Rule 70, 15-A, followed. *Lord & Bushnell Co. v. M. C. R. R. Co.*, 463 (464).

Conference ruling 286 (f) affirmed. *Ludowici-Celadon Co. v. M. P. Ry. Co.* 588.

Bulletin rule No. 66 slightly modified. *Noble v. B. & O. R. R. Co.* 432.

ADMISSION.

Maintenance of rate for eight years is a strong admission against carriers that higher rate would be unreasonable, unless explained. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (151).

ADVANCE.

Carriers in official classification territory made a voluntary reduction in rates on evaporated milk because those in trunk-line territory had done so. When the trunk-line carriers raised their rates, the carriers in official classification territory did likewise. The burden of proof being upon the defendants, this is not a sufficient justification for the advance. *Whiteland Canning Co. v. P. C. C. & St. L. Ry. Co.* 261 (262).

To hold that a carrier may not withdraw a rate found by the Commission in another case to be unreasonably low merely because that rate was voluntarily established in the first place, would amount to requiring unjust preference and to setting aside the fundamental principle that rates must be uniform under similar conditions. *Fairmont Creamery Co. v. C. B. & Q. R. R. Co.* 252 (254).

Advance in coal rates from certain Illinois mines to Chicago found to be reasonable and justified by the showing of defendants that it was made to equalize the rates from other near-by mines, and that the rate as advanced is not unreasonable in itself. *In re Advances on Bituminous Coal*, 341.

ADVANCE—Continued.

Ordinarily the advance of a rate for a short period, followed by restoration and maintenance of the lower rate formerly in force, tends to raise a presumption of fact that the advanced rate was unreasonable. But there may be exceptional facts to modify this principle. *Fairmont Creamery Co. v. C. B. & Q. R. R. Co.* 252 (253).

A group of carriers can not cast the responsibility of maintaining the burden of establishing the reasonableness of certain advances upon a single carrier and claim the benefit of whatever the case made by that carrier may establish. *In re Advances on Coal to Lake Ports*, 604 (611).

Proposed advances on coal from West Virginia fields to lake ports held not justified, except as to the Norfolk & Western, as to which the Commission is persuaded that the imposition of the increased rates will not impose an unjust and unreasonable charge for the transportation service involved. *In re Advance on Coal to Lake Ports*, 604.

After January 1, 1910, under the fifteenth section of the act, the burden of proof to show that an increased fare is just and reasonable rests with the defendants. *Citizens of Somerset v. Washington Ry. & Elec. Co.* 187 (188).

Supplement, proposing to cancel joint class rates, St. Paul, Minneapolis, and Duluth to Buffalo, Pittsburgh, and other points, leaving in effect higher combination charge, suspended. *In re Advances in Class Rates*, 338.

Burden of proof being on defendant, no reason shown why bicycles should be advanced in official classification from second to first class. *Davis Sewing Machine Co. v. P. C. C. & St. L. Ry. Co.* 201.

Advanced rates on barley, bran, and wheat from Phoenix, Ariz., and near-by points to various other points in Arizona found to be unreasonable. *Maricopa County Commercial Club v. S. F. P. & P. Ry. Co.* 216.

Proposed advance in the minimum charge on less-than-carload shipments in official classification territory from 25 cents to 35 cents not justified. *In re Rates for Single Packages etc.* 328.

Burden of proof to justify suspended advance being upon defendants, and they having failed to sustain such burden, advance condemned. *In re Advances on Iron and Steel Articles*, 486.

Increasing prosperity under former rates offsets presumption of unreasonableness of advance to old basis following temporary reduction. *In re Advances on Vehicles*, 124.

Cancellation of through rate, leaving higher combination of locals, unreasonable. *Maricopa County Commercial Club v. P. & F. R. R. Co.* 221.

ADVANTAGE.

Chicago is a grain market that draws directly upon the producing fields of Indiana and Illinois. Its elevators are supplied with equipment for cleaning, drying, cooling, and otherwise treating grain of all kinds. While Baltimore is likewise a great market, and has elevator facilities for the like treatment of grain, Chicago is much nearer the original sources of supply, and in this respect undoubtedly enjoys natural advantages which Baltimore does not possess. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 506 (508).

Each community is entitled to a reasonable rate, which rates should in addition be fairly adjusted with reference to one another. Any locality which remains at a disadvantage after this must sustain that burden, which is due to its location with respect to the business. *In re Investigation of Rates on Meats*, 160 (163).

ADVANTAGE—Continued.

In the establishment of rates on live stock from producing points to various packing-house centers, Commission must prescribe those which commend themselves to it, upon the whole, as reasonable, even though, as a result, one locality obtains the advantage over another upon the rate at which its supplies of live stock move in. *In re Investigation of Rates on Meats*, 160 (164).

If a locality has natural advantages, it should be allowed to enjoy them, but it ought not to be given the additional artificial advantage which arises from a discriminating railway tariff. *Suffern Grain Co. v. I. C. R. R. Co.* 178 (182)

ALLOWANCES.

Wherever an abnormal division is allowed to a railroad which is tied up with an industry there results an indirect and hidden rebate to a shipper, because of his ownership of the railroad. *In re Divisions of Joint Rates on Coal*, 51 (55).

ALTERNATIVE RATE.

Complainant desired that, in mixed carload shipments, if the aggregate charge upon the entire shipment on the basis of the mixed carload rate exceeds the aggregate of the charge upon the shipment on the basis of a carload rate for one or more of the articles and the actual weight at the less-than-carload rate for the other articles, it be given benefit of lower charge. Rule prayed for denied. *Marion Iron & Brass Bed Co. v. T. St. L. & W. R. R. Co.* 272.

AMENDMENT.

Complaint as filed did not ask reparation; but at hearing request for leave to amend in that respect was noted in the record. Request not having been followed by an amendment, and there being no evidence touching specific shipments, that feature of case not considered. *Atchinson v. St. L. I. M. & S. Ry. Co.* 131.

BASING POINT SYSTEM.

It is possible that cases might arise where, even though the long-distance rate were beyond control of applicant for relief, nevertheless some relation ought to be established between rate to more distant and those to intermediate points. Intermediate rate should not, for example, exceed long-distance rate plus a reasonable local charge from more remote back to intermediate point and should, perhaps, in some cases be even less. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (531).

BILL OF LADING.

Shipment must move under one bill of lading, under tariff, to obtain carload rate on actual weight of overflow. *Scudder v. T. & P. Ry. Co.* 60.

BLANKET RATE.

In considering reasonableness of blanket rate extending over large area the Commission must consider the blanket as a whole, taking the average haul. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (152).

Same rate from Missouri River to Pacific coast on canned peas as from Colorado to Pacific coast. Complaint asking lower rates from Colorado point dismissed. *Empson Packing Co. v. C. M. Ry. Co.* 268.

Commission does not care to go before courts with belief that it has authority to prescribe blanket rate from Pacific to Atlantic coasts. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (155).

BREAKING RATES.

Rates on corn break at the Ohio River. It may be questioned whether carriers ordinarily should be permitted by the mere form in which they elect to publish their tariffs to ordain that any business shall be transacted at a particular point. *Suffern Grain Co. v. I. C. R. R. Co.* 178 (181).

BRICK.

Fire brick is one of the cheapest commodities transported. Cars can be loaded to their absolute capacity and the liability for damage is slight. Shipments are made often in trainloads, the market value of a carload of fire brick (9,000 fire brick, 63,000 pounds) being from \$150 to \$175, the brick selling at an average of \$17 per 1,000. *Ashland Fire Brick Co. v. S. Ry. Co.* 115 (118).

BRIDGE TOLLS.

Allegation that present system of so-called bridge arbitraries or tolls at Louisville, Ky., subjects that point to undue disadvantage, not decided. *Norman Lumber Co. v. L. & N. R. R. Co.* 239.

BURDEN OF PROOF. *See also* **ADVANCE.**

Measured by some of the principal tests that experience has taught proper to apply—the per car earnings, the rate per ton per mile, volume and value of the traffic, rates from and to similar points moving under substantially similar circumstances and conditions—the advance does not appear to be unreasonable, and the carriers have sustained the burden of proof which the statute casts upon them. *In re Advances on Cement*, 90 (92).

A group of carriers can not cast upon one line the responsibility of maintaining the burden of establishing the reasonableness of certain advances made by all and claim the benefit of whatever the case made by that carrier may establish. *In re Advances on Coal to Lake Ports*, 604 (611).

After January 1, 1910, under the fifteenth section of the act, the burden of proof to show that an increased fare is just and reasonable rests with the defendants. *Citizens of Somerset v. Washington Ry. & Elec. Co.* 187 (188).

BURDEN OF TRANSPORTATION.

Carriers may not haul a particular class of traffic or traffic for a particular community at less than the cost of the service and recoup themselves from the charges levied against other traffic. *In re Rates for Single Packages, etc.* 328 (335).

BUSINESS SECRETS.

Carrier provided that if refrigeration was desired by per-can shippers of milk they should deliver their cans to leased-car shippers who would charge regular railroad per-can rates and a stated icing charge. This requirement is unlawful in view of recent addition of section 15 of the act which makes it unlawful for a carrier to disclose to one shipper another's business secrets. *Albee v. B. & M. R. R.* 303 (321).

CAR EARNINGS.

Important element in determining reasonableness of rate. *Merchants & Manufacturers Assn. v. A. C. L. R. R. Co.* 467 (469).

CAR FITTING.

Rate of 12½ mills per ton per mile not found unreasonable, since originating carrier of melons has an extra expense of \$1.10 for slatting cars. *Gamble-Robinson Commission Co. v. St. L. I. M. & N. Ry. Co.* 138 (140).

CAR RATES.

Custom in New England of paying lump sum at stated intervals for the transportation of carloads of milk between designated points outside the State of Massachusetts to Boston, based approximately upon distance from Boston, not found to be unlawful. *Albee v. B. & M. R. R.* 303.

CAR SIZE.

Not unreasonable for carriers to provide that minimum applicable to special car would not be protected unless carrier had failed for six days, excluding day of notice, to furnish car of size ordered; but this is not intended to relieve carriers from duty of furnishing equipment within reasonable time. It simply fixes definite period beyond which duty to furnish other equipment in lieu of that ordered shall attach. *Noble v. B. & O. R. R. Co.* 432.

Where carrier by its tariffs establishes particular minima as applicable to cars of given dimensions, it must furnish a car of size provided for in tariff and ordered by shipper; or, in case of its inability to do this, must provide other equipment under such conditions as to fairly protect the minimum of the car ordered, and its tariffs should contain a provision to that effect. *Noble v. B. & O. R. R. Co.* 432.

Initial carrier should establish rule that when car of capacity or dimensions ordered can not be furnished after six full days' notice therefor has been given by shipper and larger car is furnished, such larger car shall be used upon basis of minimum for car ordered, provided shipment could have been loaded upon or in car of size ordered. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 511 (512).

CARLOAD AND LESS THAN CARLOAD RATES.

Complainant gives Chautauqua entertainments in tents and moves its equipment from place to place, paying the less-than-carload rate on the constituent parts, including tents and poles, camp chairs, lumber, etc. Upon application for a carload rating; *Held*, That when properly described and restricted in the tariffs, Chautauqua outfits in carloads should be rated not higher than fifth class, minimum weight 20,000 pounds. *Redpath-Vawter Chautauqua System v. A. T. & S. F. Ry. Co.* 135.

Where the carrier makes a carload rate for the transportation of milk, its rates per can must bear a reasonable relation to the carload rate, taking into consideration the fact that the cost of service to the carrier is less per car as a unit than when the milk is offered in small quantities in cans from numerous stations. *Albree v. B. & M. R. R.* 303.

L. c. l. rate on 45-pound package made less charge than first-class rate on 100 pounds weight, the minimum charge in force in Official Classification. As interests affected by issue too extensive to be determined upon complaint strictly inter partes, no determination of question. *Kleibacker v. L. & N. R. R. Co.* 420.

Carload shipper is entitled to better rate than he who can only present for shipment a less than carload, since the cost of the service is less, but that difference must not be greater than circumstances warrant. *Albree v. B. & M. R. R.* 303 (327).

Fact that only one or a few shippers can avail themselves of carload rate is no objection to its validity. *Albree v. B. & M. R. R.* 303 (319).

CARRIER'S DUTY.

Not unreasonable for carriers to provide that minimum applicable to special car would not be protected unless carrier had failed for six days, excluding day of notice, to furnish car of size ordered; but this is not intended to relieve carriers from duty of furnishing equipment within reasonable time. It simply fixes definite period beyond which duty to furnish other equipment in lieu of that ordered shall attach. *Noble v. B. & O. R. R. Co.* 432.

CARS OFF LINE.

Illinois Central Railroad Co. established rule prohibiting sending of its coal cars loaded with coal to lines of certain designated connecting carriers in order to retain on its own line sufficient number of cars to serve communities dependent upon it for fuel. *Held*, That temporary confiscation by carriers of cars of other railroads and placing of embargoes against cars being sent off lines of owners are alike unlawful, and carriers are expected to make such rules as will terminate such conditions. *Missouri & Illinois Coal Co. v. I. C. R. R. Co.* 39.

Railroads are required under the act to serve the through routes which they have established with other carriers without respect to the fact that in rendering such service their equipment may be carried beyond their own lines. *Missouri & Illinois Coal Co. v. I. C. R. R. Co.* 39.

CEMENT.

First cement mills of any importance in this country were erected in the Lehigh Valley district. Prior to the time cement was produced in large quantities in this region practically all of this commodity was imported from Europe. *Elk Cement & Lime Co. v. B. & O. R. R. Co.* 84 (85).

CHANGES IN RATES ON SHORT NOTICE.

Act authorizes Commission in its discretion and for good cause shown to permit changes in tariffs or fares on less than statutory notice. Commission seeks to limit exercise of this discretionary power to cases where actual emergency and real merit are shown. Power is not to be lightly regarded, and it will not be exercised to aid a carrier in any strategic endeavor nor to aid shippers in any ordinary commercial exigency. *Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co.* 283 (285).

CHARGING WHAT TRAFFIC WILL BEAR.

In all classifications consideration must be given to what may be termed public policy, the advantage to the community of having some kinds of freight carried at a less rate than other kinds. This is the true meaning of the phrase, "what the traffic will bear." *In re Advances on Coal to Lake Ports.* 604 (623).

Railway may not impose unreasonable rate merely because business of shipper is so profitable he can pay it. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (410).

CHAUTAUQUA OUTFIT.

In establishing carload rating there exists difficulty of adequately prescribing and restricting application of a rating to these outfits, but this should be no more perplexing than the description of other outfits now appearing in classifications. *Redpath-Vawter Chautauqua System v. A. T. & S. F. Ry. Co.* 135 (137).

CIRCUMSTANCES AND CONDITIONS.

On account of water and rail competition at Charleston the circumstances and conditions surrounding the carriage of traffic to that point and Georgetown, S. C., are so dissimilar that the rate to Charleston is not necessarily the measure of a reasonable rate to Georgetown, and for the same reason the existence of a higher rate to Georgetown than to Charleston is not of itself proof of undue preference to the latter point. *Georgetown Railway & Light Co. v. N. & W. Ry. Co.* 144.

CLAIMS.

Rule requiring statement of relationship of person receiving payment of claims to corporation in whose favor voucher is made, while within jurisdiction of Commission, not found unreasonable. *Bewsher Co. v. U. P. R. R. Co.* 146.

CLASSIFICATION.

Joint class rates from points in Official Classification territory to southeastern territory are governed by southern classification. Iron and steel articles, however, are not subject to this basis, as it is the custom in making rates upon such articles to apply the official classification to the gateway and the southern classification beyond. Through rates, where published, are ordinarily on this basis. No reason shown for disturbing adjustment. *Heath Hardware Co. v. P. R. R. Co.* 223 (224).

Complainant contends that official classification ratings are unjust and unreasonable in comparison with those in southern and western classifications. A comparison of the ratings in the different classifications is by no means a guide to the relative transportation charges unless the class rates under the several classifications are also considered. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (102).

Change on bicycles from second to first class in official classification held not justified by the evidence. *Davis Sewing Machine Co. v. P. C. C. & St. L. Ry. Co.* 291.

CLEAN HANDS.

Defense to claim for damages that plaintiff does not come before Commission with clean hands. After considering facts, Commission decides claim for damages not vitiated. *Sun Co. v. I. S. R. R. Co.* 194 (199).

COMBINATION RATES.

Manner of constructing rates from central freight association territory to territory south of Ohio River by combination upon the river criticized, but total rate not found unreasonable, under particular circumstances. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (526).

Commission has repeatedly said that through rates should not be constructed by using full combination. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (532).

No merit to contention that combination and through rate shall be equal. *El Dorado Oil Mills & Fertilizer Co. v. C. R. I. & P. Ry. Co.* 286 (287).

COMMERCIAL CONDITIONS.

Effect of rate upon commercial conditions, whether an industry can exist under particular rates or particular adjustment of rates, are matters of consequence, and facts tending to show these circumstances and conditions are always pertinent. But they are only a single factor in determining the fundamental questions. A narrowing market, increased cost of production, overproduction, and many other considerations may render an industry unprofitable without showing the freight rate to be unreasonable. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (410).

While carriers have in the past often adopted policy of giving great consideration to commercial conditions, and Commission might under same circumstances require those rates to be maintained when once voluntarily established, Commission will not initiate rates upon this theory. *International Agricultural Corporation v. L. & N. R. R. Co.* 488 (495).

Power has not been lodged with this tribunal to equalize economic advantages, to place one market in competition with another, or to treat all railroads as a part of one great whole, apportion to each: certain territory, or to require all to meet upon a common basis at all points. *Ashland Fire Brick Co. v. S. Ry. Co.* 115 (121).

COMMERCIAL CONDITIONS—Continued.

Due to her natural location, Portland has certain advantages as a live-stock market, and the prevailing prices of live stock are somewhat lower there than cities on the Sound. This condition is not due to any unjust arrangement of rates, and it is not the function of the Commission to equalize communities in matters of this character. *Carstens Packing Co. v. O. & W. R. R. Co.* 77 (81).

Additional cost of operation of canning factory in Colorado over those in the East, in addition to higher cost of construction and other commercial conditions, are questions which under the statute the Commission has no authority to consider. *Empson Packing Co. v. C. M. Ry. Co.* 268 (270).

Commission not empowered to remedy disadvantages under the law. In so far only as any undue discrimination in the freight-rate adjustment may have aided to bring about the condition complained of has the Commission any regulating authority. *Elk Cement & Lime Co. v. B. & O. R. R. Co.* 84 (86).

Not within power of Commission to equalize economic conditions, or to place one market in a position to compete on equal terms with another as against natural advantages. Nor has it power to require railroads, in the face of varying trade conditions, to adjust their rates in such manner as to insure to a market the continuance of a trade it has once enjoyed. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 596 (603).

While commercial and industrial considerations often enter into the determination of a reasonable transportation charge, it is no part of Commission's duty to so adjust rates that business will or will not be done at a particular point, and that is especially true where no natural advantage is possessed by any locality. *In re Investigation of Rates on Meats*, 160 (163).

Defendants argue that lack of prosperity among operators is due to excessive competition among them. Granting this, it does not justify the imposition of an excessive rate, and such operators are entitled to a reasonable rate whether it brings the expected relief or not and irrespective of the specific channels into which the amount of the reduction will flow. *Bolleau v. P. & L. E. R. R. Co.* 640 (654).

It is not the function of the Commission to equalize commercial conditions or to establish zones of trade or bring markets into competition with each other. *In re Advances on Coal to Lake Ports*, 604 (613).

It is not the function of railroads or of this Commission to so adjust railroad tariffs that business will or will not be done at a particular locality. *Suffern Grain Co. v. I. C. R. R. Co.* 178 (182).

We can not undertake to establish freight rates which will insure production at a profit. *Florida Fruit & Vegetable Shippers' Protective Assn. v. A. C. L. R. R. Co.* 11 (14).

Railway may not impose unreasonable rate merely because business of shipper is so profitable he can pay it. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (410).

Carriers not required to establish rates that will guarantee profit to shippers. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (410).

COMMODITIES.

Acid phosphate. Charleston, S. C., to Gainesville, Fla. 304.

Acid phosphate. Ruston, La., to El Dorado, Ark. 283.

Adding machine paper. Chicago, Ill., to Portland, Oreg. 442.

Apples. St. Louis to Monroe, La. 277.

Barley. Phoenix, Ariz., to various other points in Arizona, 216.

Barrels. New Orleans, La., demurrage, 358.

COMMODITIES—Continued.

- Beds, iron. Marion, Ind., to Oakland, Cal. 272.
- Bicycles. Dayton to Chicago, 291.
- Boat spikes. Richmond, Va., to Knoxville, Tenn. 582.
- Bran. Phoenix, Ariz., to Arizona points, 216.
- Brick. Coffeyville and other Kansas points to Lewis and other Iowa points, 141.
- Brick. Kentucky and Ohio points to Birmingham, Ala. 115.
- Brick. Perla, Ark., to Ruston, Monroe, Tallulah, Winnfield, Alexandria, and Shreveport, La. 181.
- Bridge material, old. New Orleans to Richmond, Va. 281.
- Brimstone. New York to Minneapolis, 108.
- Butter and eggs. St. Paul, Minneapolis, and Duluth to Buffalo and Pittsburgh, 338.
- Canned goods. Colorado points to Pacific coast, 268.
- Canned okra. New Orleans to Pittsburgh, 420.
- Cantaloupes. Rocky Ford district, Colorado, to eastern destination, 585.
- Car wheels. Wilmington, Del., to Diamondville, Wyo. 129.
- Cattle. Phoenix to Los Angeles, 429.
- Cedar poles. Michigan and Wisconsin to Texas points, 378.
- Cement. Coffeyville, Kans., to Spokane, Wash. 588.
- Cement. Detroit, Mich., from New Jersey and Pennsylvania, 84.
- Cement. Manheim, W. Va., to C. F. A. and trunk line territory, 446.
- Cement. Michigan, Indiana, Ohio, and other points to Detroit, Toledo, and Sandusky, 90.
- Cement. New Village, N. J., to Akron, Ohio, 382.
- Chautauqua outfits. Minnesota, Iowa, and Missouri, 185.
- Citrus fruits. Florida producing points to base points for reshipment beyond, 11.
- Class rates. Bluefield, W. Va., from various points, 519.
- Class rates. El Paso, Tex., to Phoenix, Ariz. 279.
- Class rates. Laredo, Tex., from defined territory, 28.
- Class rates. Minneapolis to Buffalo, Pittsburgh, etc. 338.
- Class rates. Minneapolis to Denver, 259.
- Class rates. Reno, Nev., to and from, 205.
- Class rates. St. Paul, Minneapolis, and Duluth to Buffalo, Pittsburgh, etc. 338.
- Class rates. San Francisco and grouped points to Portland, Oreg., and grouped points, 366.
- Class rates. Sioux City, Iowa, to southwestern Minnesota, 110.
- Coal. Coal Creek mines, Tennessee, to August, Ga. 283.
- Coal. Durham and East Durham, N. C. 51.
- Coal. Gallup, N. Mex., to Tempe and Mesa, Ariz. 221.
- Coal. Harrisburg field, Illinois, to Chicago and Milwaukee, 341.
- Coal. Pittsburgh district to Lake ports, 640.
- Coal. Pocahontas district, West Virginia, to Georgetown, S. C. 144.
- Coal. St. Clair, Ill., to various interstate points, 89.
- Coal. Virginia and Maryland ports, trimming charges, 398.
- Coal. Walsenburg district, Colorado, to points on Santa Fe, 264.
- Coal. West Virginia to Lake ports, 604.
- Coal. Wilderman, Ill., to various interstate points, 89.
- Coke. Appalachia, Va., to Rusk, Tex. 274.
- Company material. 459.

COMMODITIES—Continued.

- Condensed milk. Creamery, Ariz., to Arizona, California, and New Mexico, 218.
- Corn. Decatur, Ill., milling in transit, 178.
- Corn. Joplin group to Little Rock territory, 422.
- Cotton. Vicksburg, Miss., to New Bedford, Mass. 21.
- Cotton seed. Arkansas, Louisiana, Missouri, and Oklahoma to Memphis, Tenn. 537, 548.
- Cotton waste. Charlotte, N. C., to New York, 203.
- Cottonseed hulls. Laurinburg, N. C., to Birmingham, Ala. 4.
- Counters. Fort Scott, Kans., to Memphis, Tenn., and Lawton, Okla. 590.
- Cream. Concordia, Kans., to Crete, Nebr. 252.
- Crossties. Houston and Louisville, Miss., and intermediate points to Cairo, Ill. 578.
- Crossties. Kansas City from various points, 471.
- Crude oil. Stoy, Ill., to Des Moines and Ottumwa, Iowa, and Sioux Falls, S. Dak. 194.
- Crude petroleum oil. Sapulpa, Okla., to Humboldt, Kans. 363.
- Dressed meats. Houston, Tex., to Lake Charles, La. 456.
- Eggs. Duluth, Minneapolis, and St. Paul to Buffalo and Pittsburgh, 338.
- Evaporated milk. Whiteland, Ind., from all points in Central Freight Association territory, 261.
- Farm wagons. Toledo, Ohio, to Gordo, Ala. 460.
- Farm wagons. Toledo, Ohio, to Smithville, Tex. 511.
- Fertilizer materials. Charleston, S. C., to Gainesville, Fla. 394.
- Fertilizer materials. Ruston, La., to El Dorado, Ark. 286.
- Filing folders. Chicago, Cincinnati, and Grand Rapids to Portland, Oreg. 442.
- Fire brick. Kentucky and Ohio points to Birmingham, Ala. 115.
- Fire brick. Perla, Ark., to Ruston, Monroe, Tallulah, Winnfield, Alexandria, and Shreveport, La. 131.
- Flaxseed. Esmond, S. Dak., to Minneapolis. 346.
- Flour. Glen Elder, Kans., to New Orleans, La. 24.
- Folders, filing. Chicago, Cincinnati, and Grand Rapids to Portland, Oreg. 442.
- Fresh meats. Fort Worth, Oklahoma City, and Wichita to all points of consumption, 160.
- Fresh meats. Houston, Tex., to Lake Charles, La. 456.
- Fruit. Blodgett, Mo., to St. Joseph, Mo. 405.
- Fruit. Florida producing points to base points for reshipment beyond, 11.
- Fruit baskets. Wynne, Ark., to Horatio, Ark. 288.
- Fuel oil. Sapulpa, Okla., to Acme, Tex. 283.
- Girders. Baltimore to points in North and South Carolina, 467.
- Go-carts. Elkhart, Ind., to Los Angeles and Oakland, Cal. 570.
- Grain. Baltimore, Md., from Illinois and Indiana, 506.
- Grain. Bluefield, W. Va., from Cincinnati and Columbus, Ohio, 519.
- Grain. Chattanooga, Tenn., to Collinsville, Ala. 480.
- Grain. Chicago from various interstate points, 36.
- Grain. Decatur, Ill., transit privilege, 178.
- Grain. Omaha to Atlanta, 62.
- Grain. Omaha, Nebr., signatures to vouchers, 146.
- Grain. Omaha to Conway and Morrilton, Ark., milled in transit at Little Rock, Ark. 249.
- Grain. St. Louis, Mo., and Cairo, Ill., to Plano, Tex., destined beyond, 300.
- Grain. St. Louis and other Missouri River points, elevator allowances, 496.
- Hardwood lumber. Louisville, Ky., from southern points, 239.

COMMODITIES—Continued.

- Hardwood lumber. Michigan to Pacific coast terminals, 387.
- Hardwood lumber. North Birmingham, Ala., to New Brunswick, N. J., and Philadelphia, Pa. 349.
- Hay. Chattanooga, Tenn., to Collinsville, Ala. 480.
- Heading bolts. Paducah, Ky., to points south, 226.
- Hoops, elm. Minimums, 432.
- Iron articles. Advances, general, 486.
- Iron articles. Bluefield, W. Va., from Pittsburgh, Pa. 519.
- Iron bars. St. Louis to Denver, 477.
- Iron beds. Marion, Ind., to Oakland, Cal. 272.
- Iron girders. Baltimore to North and South Carolina points, 467.
- Iron wire fencing. Monessen, Pa., to Lawrenceville, Va. 223.
- Kaimit. Ruston, La., to El Dorado, Ark. 286.
- Lemons. Pacific coast to Atlantic seaboard, 149.
- Live stock. Idaho and Oregon points to Tacoma, Wash. 8.
- Live stock. Portland, Oreg., to Tacoma and Seattle, Wash. 77.
- Live stock. Texas points to Fort Worth, Oklahoma City, and Wichita, 100.
- Logs. McKenzie and Humboldt, Tenn., to Evansville, Ind. 1.
- Logs. McLeans Spur, Ky., to Louisville, 458.
- Lumber. Dearborn, Tex., to Upland, Nebr. 75.
- Lumber. Ingram, Wis., to Stevens Point, Wis. 255.
- Lumber. Louisville, Ky., from southern points, 239.
- Lumber. Michigan to Pacific coast terminals, 387.
- Lumber. Newport and Johnson City, Tenn., transit privilege, 82.
- Lumber. North Birmingham, Ala., to New Brunswick, N. J., and Philadelphia, Pa. 349.
- Lumber. Sumrall, Miss., to Dayton, Ohio, 463.
- Manila paper filing folders. Chicago, Grand Rapids, and Cincinnati to Portland, Oreg., 442.
- Meats. Fort Worth, Oklahoma City, and Wichita to all points of consumption, 100.
- Merchandise. Eastern destinations to Yuma, Ariz. 185.
- Milk. Boston, Mass., from northern points outside Massachusetts, 303.
- Milk. Minnesota to Duluth, 573.
- Mining-car wheels. Wilmington, Del., to Diamondville, Wyo. 129.
- Nails. Coffeyville, Kans., to Spokane, Wash. 588.
- Oats. Hurley, S. Dak., to Chicago, Ill. 34.
- Oil. Sapulpa, Okla., to Acme, Tex. 283.
- Oil. Sapulpa, Okla., to Humboldt, Kans. 363.
- Oil, crude. Stoy, Ill., to Des Moines and Ottumwa, Iowa, and Sioux Falls, S. Dak. 194.
- Okra, canned. New Orleans to Pittsburgh, 420.
- Packages. Minimum charge, 328.
- Packing-house products. Fort Worth, Oklahoma City, and Wichita, to all points of consumption, 100.
- Packing-house products. Houston, Tex., to New Orleans, 456.
- Packing-house products. Kansas City, Mo., switching charges, 385.
- Packing-house products. Portland, Oreg., to Tacoma and Seattle, Wash. 77.
- Paper, adding-machine. Chicago, Ill., to Portland, Oreg. 442.
- Paper filing folders. Chicago, Cincinnati, and Grand Rapids to Portland, Oreg. 442.
- Petroleum oil. Sapulpa, Okla., to Humboldt, Kans. 363.
- Piling. Oregon to California points, 507.
- Pineapples. Florida producing points to base points for beyond, 11.

COMMODITIES—Continued.

- Plain wire. Waukegan, Ill., to Carthage, Mo. 513.
- Poles. Michigan and Wisconsin to Texas points, 378.
- Poles. Oregon to California points, 507.
- Pulp wood. Minnesota producing points to Superior, Wis. 504.
- Roofing felt. Coffeyville, Kans., to Spokane, Wash. 588.
- Roofing tile. Coffeyville, Kans., to Spokane, Wash. 588.
- Salt. Kansas field to Missouri River, 407.
- Salt. Kansas fields to Oklahoma City, Okla. 160.
- Scrap iron. New Orleans to Richmond, Va. 281.
- Sheep. Phoenix to Los Angeles, 429.
- Sheet iron. Youngstown, Ohio, to Monroe, N. C. 223.
- Shelving. Fort Scott, Kans., to Memphis, Tenn., and Lawton, Okla. 590.
- Shooks. New Orleans, La., demurrage, 358.
- Show cases. Detroit, Mich., to Seattle, Wash. 106.
- Spikes. Richmond, Va., to Knoxville, Tenn. 582.
- Stamped ware. Buffalo, N. Y., to Pacific coast terminals, 565.
- Stave bolts. Paducah, Ky., to points south, 228.
- Steel articles. Advances, general, 486.
- Steel bars. St. Louis to Denver, 477.
- Steel girders. Baltimore, Md., to points in North and South Carolina, 467.
- Steel plates. St. Louis to Denver, 477.
- Steel sheets. St. Louis to Denver, 477.
- Structural steel (not fabricated). St. Louis to Denver, 477.
- Sugar. New Orleans to Gramercy, La. 558.
- Sugar. New Orleans to Sioux City, Iowa, 60.
- Sulphuric acid. Copperhill, Tenn., to Florida, Georgia, North and South Carolina, 488.
- Vegetables. Florida producing points to base points for reshipment beyond, 11.
- Vehicles. Elkhart, Ind., to Milwaukee, Wis. 516.
- Vehicles. Suffolk, Va., to North and South Carolina, 124.
- Vehicles. Toledo, Ohio, to Ohio River crossings and Virginia cities, 93.
- Wagons. Toledo, Ohio, to Gordo, Ala. 400.
- Wagons. Toledo, Ohio, to Ohio River crossings and Virginia cities, 93.
- Wagons. Toledo, Ohio, to Smithville, Tex. 511.
- Watermelons. Blodgett, Mo., to St. Joseph, Mo. 405.
- Watermelons. Holcomb and Blodgett, Mo., to Minneapolis and St. Paul, Minn. 138.
- Wheat. Esmond, S. Dak., to Minneapolis, 346.
- Wheat. Joplin group to Little Rock territory, 422.
- Wheat. Phoenix, Ariz., to Arizona points, 216.
- Window glass. Kansas to Mississippi River crossings, 391.
- Wire. Waukegan, Ill., to Carthage, Mo. 513.
- Wire mattresses. Marion, Ind., to Oakland, Cal. 272.
- Yellow-pine lumber. Sumrall, Miss., to Dayton, Ohio, 403.

COMMODITY RATES.

- Rates on fresh meats and packing-house products from Houston, Tex., to Lake Charles and New Orleans higher than class rates. Houston Packing Co. v. T. & N. R. R. Co. 456.

COMMON POINT RATES

- Complaint that section 3 of the act is violated in not putting Laredo, Tex., in Texas common-point territory not sustained. Board of Trade of Laredo, Tex., v. I. & G. N. R. R. Co. 28.

COMMUTATION RATES.

Complaint for establishment of commutation tickets which shall increase number of monthly trips from 50 to 62 dismissed. *Silvester v. City & Suburban Ry. of Wash.* 201.

COMPARATIVE RATES.

Complainant's contention that rate on stave and heading bolts should not exceed rate on logs has some force, but, in absence of showing of unreasonableness of rates on bolts, Commission would not be justified in requiring reduction of rates on bolts. Merely showing that articles are similar, order would be limited to prescribing rate on bolts not in excess of rate on logs, which might be obeyed by increasing rate on logs. *Paducah Cooperage Co. v. N. C. & St. L. Ry. Co.* 226 (232).

Complainant contends that the official classification ratings are unjust and unreasonable in comparison with those in the southern and western classifications. A comparison of the ratings in the different classifications is by no means a guide to the relative transportation charges unless the class rates under the several classifications are also considered. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (102).

Counters and shelving are essentially store furniture, and are as desirable traffic as other articles in the classification under the item "furniture"; the transportation risk and service are practically the same, and they should not take higher rates than applicable to other articles of store furniture specifically mentioned. *Ireland & Rollings v. St. L. & S. F. R. R. Co.* 590 (591).

In fixing rates on competitive articles relation should be determined on basis of difference in cost of service and many of the other considerations entering into establishment of rates upon independent or isolated articles should be, in large part, eliminated. *Carstens Packing Co. v. O. & W. R. R. Co.* 77 (81).

Commission, under amendment to section 1 of 1910, giving it control of freight classification, has power to determine reasonableness of differences that are made between the rates on various kinds of commodities. In re *Advances on Coal to Lake Ports.* 604 (623).

Rates on poles and piling from various points in Oregon to stations on defendant's line in California found unreasonable to the extent they exceeded the lumber rates between the same points. *California Pole & Piling Co. v. S. P. Co.* 507.

Sulphuric acid is strictly a raw material in the manufacture of fertilizer, and distinctly lower rates should be applied to its transportation than upon the manufactured fertilizer. *International Agricultural Corporation v. L. & N. R. R. Co.* 488 (493).

Such a low-grade traffic as pulp wood should ordinarily take a lower rate than lumber; but in this case, the lumber rate being competitive, the rate on wood pulp prescribed on the lumber-rate basis. *Wisconsin Pulp Wood Co. v. G. N. Ry. Co.* 594 (595).

Sheet iron and iron wire fencing compared with boiler iron, bridge iron, tank iron, wheels, and steel and iron wire, and no sufficient analogy found to justify grouping them. *Heath Hardware Co. v. P. R. R. Co.* 223 (225).

Bicycles are no longer luxuries but commercial necessities. Comparisons should not be made between them and motor boats, canoes, etc., but rather with other articles. *Davis Sewing Machine Co. v. P. C. C. & St. L. Ry. Co.* 291.

COMPARATIVE RATES—Continued.

"Roll paper for adding machines" found to be, from transportation standpoint, the same as "check paper for cash registers," and entitled to same rate. *Gill Co. v. O. R. R. & N. Co.* 442 (445).

Evaporated milk, canned, compared with other canned goods and found, in view of the circumstances, to be entitled to the same rates. *Whiteland Canning Co. v. P. C. C. & St. L. Ry. Co.* 261.

Iron and steel bars and certain steel products compared with certain specific rates on other iron and steel products between the same points. *Vulcan Iron Works v. A. T. & S. F. Ry. Co.* 477 (478).

Evidence held to sustain claim that mining-car wheels should take no higher rate than "skips," of which they are a part. *Diamond Coal & Coke Co. v. B. & O. R. R. Co.* 129.

Upon the facts of this case carriers ordered to maintain rates on hardwood lumber not more than 2 cents higher than on yellow-pine lumber. *McLean Lumber Co. v. L. & N. R. R. Co.* 349.

Manila paper filing folders compared with "manila tag board" and found entitled to rates lower than at present applied to them. *Gill Co. v. O. R. R. & N. Co.* 442.

Rates on crossties should not exceed rates on rough lumber of same description. *Switzer Lumber Co. v. A. & M. R. R. Co.* 471 (475).

Cotton waste compared with cotton goods and held entitled to a lower rate. *South Atlantic Waste Co. v. S. Ry. Co.* 293.

Cost of transportation in case of live stock and products of live stock is approximately the same. *Carstens Packing Co. v. O. & W. R. R. Co.* 77 (81).

Canned peas should take same rate as canned goods of general mixture. *Empson Packing Co. v. C. M. Ry. Co.* 265.

Sulphuric acid compared with phosphate rock. *International Agricultural Corporation v. L. & N. R. R. Co.* 488 (493).

Sulphuric acid compared with pyrites. *International Agricultural Corporation v. L. & N. R. R. Co.* 488 (490).

Rates on milk should be lower than on cream. *Bridgeman-Russel Co. v. G. N. Exp. Co.* 573.

Low-grade fire brick compared with common building brick. *Atchinson v. St. L. I. M. & S. Ry. Co.* 131.

Rates on fruit baskets compared with rates on lumber. *Wells-Higman Co. v. St. L. I. M. & S. Ry. Co.* 288.

Rates on cedar poles should not exceed rate on lumber. *National Pole Co. v. C. St. P. M. & O. Ry. Co.* 378.

COMPETITION. See also WATER COMPETITION.

If carriers attempt to rely upon competition as a justification for a discriminatory adjustment of rates, they must show not only the fact but the reason for it. If there is no reason outside the mere whim of their traffic managers, then the roads must bear the burden of the poor company in which they find themselves at competitive points. *Suffern Grain Co. v. I. C. R. R. Co.* 178 (181).

COMPLAINT.

In dealing with certain class rates applicable to specific kinds of a commodity from a particular locality, Commission can not determine what rates are reasonable for the transportation of other commodities from the same point or of the same commodity from other points, but such questions must be determined in other proceedings. *Milburn Wagon Co. v. L. & M. S. Ry. Co.* 93 (101).

COMPLAINT—Continued.

If rates complained of are shown by the record to be unreasonable or discriminatory, it is duty of Commission to so find, even though such finding may not give relief to full extent desired by complainants. *Chattanooga Feed Co. v. A. G. S. R. R. Co.* 480 (485).

CONCURRENCE.

Where an initial line publishes and maintains one joint tariff, which is not properly concurred in by its connections, and at the same time another joint tariff naming higher rates and properly concurred in, the latter tariff is the legal one and must be applied. *Kennedy & Co. v. St. L. S. W. Ry. Co.* 277.

Initial line publishing joint rate lower than combination without securing connection's concurrences must nevertheless protect such rate to a shipper who made a contract based on the lower rate. *De Camp Bros. & Yule Iron, Coal & Coke Co. v. V. & S. W. Ry. Co.* 274.

Initial line publishing what purports to be a joint tariff, but which is not a legal tariff because not concurred in by connections, is liable in damages for whatever amount shipper suffers. *Edison Portland Cement Co. v. D. L. & W. R. R. Co.* 382.

A joint rate over several lines not concurred in by such connecting lines is in direct contravention of the rules of the Commission made under section 6. *De Camp Bros. & Yule Iron, Coal & Coke Co. v. V. & S. W. Ry. Co.* 274 (276).

CONFLICTING RATES.

Conference Ruling No. 239, entitling shipper to benefit of lower conflicting rates, followed. *Ireland & Rollings v. St. L. & S. F. R. R. Co.* 590 (592).

Where conflicting rules which affect the rate are published effective on the same date in separate tariffs by the same carrier, the rule which will result in the application of lower rates is one which is lawfully applicable to traffic to which such rules apply. *Badenoch Co. v. C. & N. W. Ry. Co.* 36.

CONSTRUCTION OF TARIFF.

Southern classification construed, and held that farm wagons were properly rated as sixth-class freight and did not come within the exception in favor of "agricultural implements," in which were included farm wagons and other articles taking a mixed carload rate. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 460.

CONSTRUCTIVE MILEAGE.

In the division of rates between rail and water carriers, one land mile is constructively reckoned as equivalent to two nautical miles north of Cape Hatteras, while to the south of the Cape one land mile is equal to three nautical miles. *South Atlantic Waste Co. v. S. Ry. Co.* 208.

In the adjustment of interline accounts between carriers an expensive bridge is ordinarily considered as constructive mileage and the division of joint rates made upon that basis. *Norman Lumber Co. v. L. & N. R. R. Co.* 239 (247).

CONTRACTS.

Unpublished agreement between shipper and carrier can not be basis of award of damages by Commission. Commission has no authority to administer a remedy in applications for relief based solely upon a contractual relationship between the parties, and whatever may be the rights and equities of the parties in the courts. Commission can only award damages where there has been a violation of the act to regulate commerce. *Wood-Mosaic Flooring & Lumber Co. v. L. & N. R. R. Co.* 458 (459).

CONTRACTS—Continued.

Power of Commission to require switch connection not founded upon any contractual relationship existing between carriers and those entitled to invoke the benefit of the statute, and Commission is without jurisdiction to compel defendant to specifically perform a contract in respect thereto or to award damages for the breach thereof. *Ralston Townsite Co. v. M. P. Ry. Co.* 354 (355).

Contract with respect of spotting cars at plant of complainant construed, and *Held* that, it being optional for complainant to break it, it should do so before it can complain that it is unjustly discriminated against. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 540.

COST OF SERVICE.

It is not beyond range of possibility to approximate the cost of carrying freight as distinguished from passengers over a certain division or even the carrying of a certain kind of freight when this constitutes a large portion of a carrier's traffic over such division. Certainly for purposes of comparison such cost figures could be ascertained upon any road by the settling of a few questions by this Commission, or between the carriers themselves. *In re Advances on Coal to Lake Ports*, 604 (615).

In the end there must be a relation between the cost of service and charge to the public for that service. If character of service performed is changed by public mandate so as to increase expense of performing the service, then the public must pay for its performance. It is therefore in the public interest that every transportation service should be performed by the most economical method. *Albree v. B. & M. R. R.* 308 (316).

Costs do not determine rates; yet most rates have within them as a constituent the element of cost. Cost is generally an important element in arriving at a judgment with respect to a rate. What weight shall be given to that element as compared with all the other elements entering into a particular rate is a matter to be decided in each individual case. *Bolleau v. P. & L. E. R. R. Co.* 640 (652).

In fixing rates on competitive articles relation should be determined on basis of difference in cost of service, and many of the other considerations entering into establishment of rates upon independent or isolated articles should be in large part eliminated. *Carstens Packing Co. v. O. & W. R. R. Co.* 77 (81).

A definite and uniform allotment of funds from the charge imposed for the movement of each character of traffic to provide for interest, dividends, and surplus is not proper or justifiable, for the plain reason that it entirely abrogates all classification. *In re Advances on Coal to Lake Ports*, 604 (625).

There is no flexible limit of judgment if all rates must be upon a level of cost, and out of every dollar paid to the carrier must come a fixed amount of return for capital invested. *In re Advances on Coal to Lake Ports*, 604 (624).

Cost of transportation in case of live stock and products of live stock is approximately the same. *Carstens Packing Co. v. O. & W. R. R. Co.* 77 (81).

Approximate cost of handling small shipments ascertained. *In re Rates for Single Packages, etc.* 328.

CRIMINAL LAW.

It is as unlawful for carrier to overcharge shipper as to give rebates. Criminal prosecutions will follow if overcharges are not promptly refunded when admittedly due. *Interstate Grain Co. v. C. & N. W. Ry. Co.* 84 (85).

DAMAGES.

Unpublished agreement between shipper and carrier can not be basis of award of damages by Commission. Commission has no authority to administer a remedy in applications for relief based solely upon a contractual relationship between the parties, and whatever may be the rights and equities of the parties in the courts, the Commission can award damages only where there has been a violation of the act. *Wood-Mosaic Flooring & Lumber Co. v. L. & N. R. R. Co.* 458 (459).

Carrier published joint tariff showing it could make delivery on track of carrier from whom it had not obtained concurrences. Consignee paid drayage charges on shipment, which connecting line refused to deliver without payment of switching charges. *Held*, such drayage charges constitute measure of damage. *Edison Portland Cement Co. v. D. L. & W. R. R. Co.* 382.

Complaint as filed did not ask reparation; but at hearing request for leave to amend in that respect was noted in the record. Request not having been followed by an amendment, and there being no evidence touching specific shipments, that feature of case not considered. *Atchinson v. St. L. I. M. & S. Ry. Co.* 131.

The law contemplates that an award of damages shall be made to the person actually damaged. Where the complainant does not appear to have suffered any injury, having no legal interest in an overcharge, the Commission can make no award of reparation. *Lamb, McGregor & Co. v. C. & N. W. Ry. Co.* 346.

Petition for damages arising out of embargo against cars going to points on connecting lines denied for the reason that it was not shown with any definiteness that complainant suffered damage. *Missouri & Illinois Coal Co. v. I. C. R. R. Co.* 39 (50).

Defense to claim of damages was that plaintiff did not come before Commission with clean hands. If the fact were so, conclusion might be that no damages could be awarded, but, after considering the facts, Commission decided that claim was not vitiated. *Sun Co. v. I. S. R. R. Co.* 194 (199).

There being some confusion in the record as to who paid the freight charges, case held open for plaintiff to prove its interest. *Wisconsin Pulp Wood Co. v. G. N. Ry. Co.* 594.

Where, in former opinion, shipper and carrier left to agree upon amount of damages, and they fail, Commission will make award. *Spiegle & Co. v. S. Ry. Co.* 82.

In view of voluntary reductions, no damages awarded. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.* 537 (539).

Damages awarded on shipments made under a higher rate than that applied at present and maintained for two years. *Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co.* 283.

Commission merchant paid charges and charged up against consignor. *Held*, not entitled to damages for overcharge. *Lamb, McGregor & Co. v. C. & N. W. Ry. Co.* 346.

Rates found discriminatory, but damages denied. *Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co.* 548.

Commission can only award damages measurable by difference in rates. *Sun Co. v. I. S. R. R. Co.* 194 (199).

Liability of carrier for damages resulting from misrouting. *Ludowici-Celadon Co. v. M. C. R. R. Co.* 588.

Measure of damages for misrouting shipment billed to consignee carrier. *In re Transportation of Company Material*, 439 (441).

DELIVERY.

Refusal to deliver without payment of switching charges. **Edison Portland Cement Co. v. D. L. & W. R. R. Co.** 382.

DEMURRAGE.

Requirement of carrier that, to be entitled to benefit of average plan, bond should be executed containing clause stipulating that no notice was to be given surety of default of principal, not found unreasonable, and demurrage charges accruing during period of negotiations about entering into agreement held to have been lawfully imposed. **Washburn-Crosby Milling Co. v. S. Ry. Co.** 465.

Large number of cars held outside private sidetrack awaiting delivery, due to complainant having more business than facilities to handle it, does not constitute a "benching in transit" by the delivering line. **Brooklyn Cooperative Co. v. I. C. R. R. Co.** 355.

DIFFERENTIAL.

On packing-house products and fresh meats from Fort Worth, Oklahoma City, and Wichita, Commission prescribed certain differentials as between competing packing-house centers. In re **Investigation of Rates on Meats**, 160 (171).

DISCLOSURE OF SHIPPER'S BUSINESS.

Carrier provided that if refrigeration was desired by per-can shippers of milk, they should deliver their cans to leased-car shippers, who would charge regular per-can rates and a stated icing price. This requirement is unlawful in view of the recent addition to section 15 of the act which makes it unlawful for a carrier to disclose to one shipper another's business secrets. **Albee v. B. & M. R. R.** 303 (321).

New provision of act clearly indicates intent upon part of Congress to secure to every shipper immunity from a disclosure of his business at the hands of a common carrier. **Albee v. B. & M. R. R.** 303 (321).

DISCRIMINATION. See also PREFERENCE.

Considering Elevator Allowance cases of Supreme Court together, Commission concludes that it was intention of Supreme Court to hold that whatever might be the case if railroad saw fit to confine its payment to elevation actually required in transportation of grain, it must, when it makes this allowance to one elevator under such circumstances as to give that elevator payment for commercial elevation, extend the same privilege to all other elevators similarly situated. **Traffic Bureau, etc., of St. Louis v. C. B. & Q. R. R. Co.** 496.

A railroad has no right, under the pretext of a transfer which it does not require, to furnish a grain dealer commercial elevation, or, what amounts to the same thing, to pay an elevator allowance for the commercial elevation of his grain; and if it does so, it must accord the same privilege or make the same payment to other persons and at other points. **Traffic Bureau, etc., of St. Louis v. C. B. & Q. R. R. Co.** 496.

Absorption of switching charges on cars containing less than-carload freight, in lots of 6,000 pounds or more, received from connecting carriers within switching limits, destined to carrier's freight houses or warehouses and thence to points on its line, but refusing to absorb such switching charges on cars handled through its train yards, constitutes an unjust discrimination. **Swift & Co. v. M. P. Ry. Co.** 385.

There can be no discrimination against complainant, who does not ship over defendant's line, because defendant maintains a low inland proportional rate on imported sugar. In re **Rates, etc., of the Louisiana Ry. & Nav. Co.** 558 (564).

DISCRIMINATION—Continued.

Order that rate on stave and heading bolts should not exceed that on logs might be complied with by raising logs as by reducing bolts. *Paducah Cooperage Co. v. N. C. & St. L. Ry. Co.* 226 (232).

Rate on plain wire entering into manufacture of spring beds should take lower rate than spring beds. *Leggett & Platt Spring Bed & Mfg. Co. v. M. P. Ry. Co.* 513.

DISTANCE.

Defendants contend that so long as rates from farther distance points were greater in the aggregate than those from shorter distance points no claim of discrimination could arise. With this the Commission can not agree. Followed to its logical conclusion, carriers would have the right to completely nullify distance and give shippers far removed from consuming markets absolute control of prices in such markets as against shippers located nearer thereto. *Elk Cement & Lime Co. v. B. & O. R. R. Co.* 84 (88).

Commission does not hold that rates beyond a common junction point from different points of origin must in every case increase in equal ratio, regardless of relative distances and other possible material considerations, but a substantial disparity in this regard imposes upon carriers the burden of justification by showing a dissimilarity of conditions from the favored section. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 446 (450).

Fact that tonnage out of Twin Cities southward is heavier than that of Sioux City northward was strongly urged in justification of a lower rate, but under the circumstances of this case it would not suffice to overcome the firmly established principle of applying equal rates for equal distances under similar operating conditions, no substantial dissimilarity in this respect having been shown. *Sioux City Commercial Club v. C. & N. W. Ry. Co.* 112 (114).

It is a rule too well settled to need discussion that as distance increases the rate per ton per mile decreases, and merely because a greater distance point has a lower rate per ton per mile than a shorter distance point discrimination does not necessarily result. *Elk Cement & Lime Co. v. B. & O. R. R. Co.* 84 (88).

Average haul of lemons from California producing points one of most important transportation considerations entering into reasonableness of rate when compared with average haul of oranges. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (152).

Why rates over for the most part an identical route and for almost exactly the same distance should differ by one-eighth requires some explanation. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (528).

Rapid increase of rates as point of production is removed from base points presents an anomaly in rate making which calls for explanation. *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.* 11 (17).

DISTANCE SCALE.

While we ought to consider general effect upon revenues of carriers by establishment of uniform-distance scale, mere fact that some particular rate would be somewhat advanced or reduced in comparison with other rates is no valid objection to that course. *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.* 11 (16).

DISTURBANCE OF ADJUSTMENT.

The fact that reduction of an unreasonable rate or the correction of an unjust discrimination will require reductions or corrections at other points can not be accepted as a valid defense of an unreasonable rate or an unjust discrimination. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (101).

DISTURBANCE OF ADJUSTMENT—Continued.

Rates complained of were adjusted with reference to rates to other points, and fact that change would disturb entire adjustment is one of matters entitled to careful consideration *Chattanooga Feed Co. v. A. G. S. R. R. Co.* 480 (484).

Justice should not be denied complainant because to grant it will necessitate a change elsewhere. Equality can not be withheld because it is or will be objected to by other carriers or shippers. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (100).

DIVIDENDS.

A definite and uniform allotment of funds from the charge imposed for the movement of each character of traffic to provide for interest, dividends, and surplus is not proper or justifiable, for the plain reason that it entirely abrogates all classification. *In re Advances on Coal to Lake Ports*, 604 (625).

DIVISION.

It has often been said by the Commission that the law has no concern with division of rates which carriers make by agreement with each other; but this principle has very decided limitations. If railroad is a shipper, or is owned by a shipper, or is so linked up with a shipper that a division of a rate means a rebate or a discrimination in favor of or an advantage to shipper, the Commission may properly look into the nature of the service which the carrier gives and the division which it receives. *In re Divisions of Joint Rates on Coal*, 51 (53).

No reason to say that joint rate to Buffalo, long effective and practically admitted to be reasonable, should now be increased because of loss of revenue to one of carriers, not on traffic to that point but by reason of interline division of such joint rate when used as a factor in constructing a combination to New York. *In re Advance in Class Rates*, 338 (340).

Wherever an abnormal division is allowed to a railroad which is tied up with an industry there results an indirect and hidden rebate to a shipper because of his ownership of the railroad. *In re Divisions of Joint Rates on Coal*, 51 (55).

Comparisons of divisions received by carriers may be considered in connection with other evidence in determining the reasonableness of a particular rate. *Lindsay Bros. v. L. S. & M. S. Ry. Co.* 516 (517).

Shippers may not be compelled to wait indefinitely for reasonable rates which are withheld because of inability of carriers to agree as to how they will divide the earnings. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (100).

The proportions received by carriers in the division of joint rates ordinarily affords little basis upon which to determine the reasonableness of the joint rates. *Stirtz v. N. O. M. & C. R. R. Co.* 578 (581).

DRAYAGE.

Drayage charges, as measure of damages. *Fallon Portland Cement Co. v. D. L. & W. R. R. Co.* 382.

Ticket, copy of. *Seudder v. T. & P. Ry. Co.* 60.

EARNINGS.

In considering the reasonableness of a whole schedule of rates the Commission may well at the outset make inquiry as to the general financial condition of the defendant railroad. *R. R. Com. of Nev. v. N. C. O. Ry. Co.* 206 (210).

Fairest test of reasonableness of rates is earnings per car-mile and per train-mile. *In re Advances on Coal to Lake Ports*, 604 (620).

ELECTRIC RAILWAY.

Complainants, who reside on the electric line between Washington, D. C., and Laurel, Md., attack the schedule of single fares and monthly commutation fares established by the defendants for transportation between points on the line in Maryland and the city of Washington, D. C.; *Held*, that, upon the record, said fares are not shown to be unreasonable. *Silvester v. City & Suburban Ry. of Wash.* 201.

Electric railways are common carriers by railroad within the meaning of the act, and when engaged in interstate commerce are subject to the jurisdiction of this Commission. *Citizens of Somerset v. Washington Ry. & Elec. Co.* 187 (189).

ELEVATOR ALLOWANCES.

Considering Elevator Allowances cases of Supreme Court together, Commission concludes that it was intention of Supreme Court to hold that whatever might be the case if railroad saw fit to confine its payment to elevation actually required in transportation of grain, it must, when it makes this allowance to one elevator under such circumstances as to give that elevator payment for commercial elevation, extend the same privilege to all other elevators similarly situated. *Traffic Bureau, etc., of St. Louis v. C. B. & Q. R. R. Co.* 496.

A railroad has no right, under the pretext of a transfer which it does not require, to furnish a grain dealer commercial elevation, or, what amounts to the same thing, to pay through an elevation allowance for the commercial elevation of his grain, and if it does so it must accord the same privilege or make the same payment to other persons and at other points. *Traffic Bureau, etc., of St. Louis v. C. B. & Q. R. R. Co.* 496.

Commercial elevation and transportation elevation of grain defined and discussed, and the opinion expressed that the decisions of the Supreme Court refer to transportation elevation. *Traffic Bureau, etc., of St. Louis v. C. B. & Q. R. R. Co.* 496.

While decision of Supreme Court in Elevator Allowance cases not entirely clear, Commission seems to be sustained in its contention that it has power to forbid a discrimination in making allowances at one point while denying them at another similarly situated. *Suffern Grain Co. v. I. C. R. R. Co.* 178 (183).

Payment confined to grain actually passing through elevators in 10 days. *Traffic Bureau, etc., of St. Louis v. C. B. & Q. R. R. Co.* 496.

EMBARGO.

An embargo may be justifiable because of physical inability of carrier for some reason to deal with traffic which overwhelms it, but an embargo placed against connecting carriers because of their failure to promptly return cars is not consonant with the service which carriers constituting through routes are required by law to give. *Missouri & Illinois Coal Co. v. I. C. R. R. Co.* 39.

EQUALIZING RATES.

Commission can not accept basis of adjustment of live-stock rates and packing-house products into and out of Fort Worth, Oklahoma City, and Wichita which looks to an absolute equalization of total through charges as between these different packing-house centers. The packers voluntarily located at these points, and if in fact that location is such that the haul upon the live animal is longer in one case, while that upon the manufactured product is no less, then that house rests under a natural disability which ought not to be equalized in the rate. In re *Investigation of Rates on Meats*, 160 (163).

EQUALIZING RATES—Continued.

The duty imposed by law is to give equal treatment to all shippers who are in a position to demand it, and this includes the right to reach competitive markets on relatively equal terms. Carriers are not required by law and could not in justice be required to equalize natural disadvantages, such as location, cost of production, and the like, but they may not in any manner whatsoever prefer one set of shippers entitled to equal treatment over another, or one locality over another. *Elk Cement & Lime Co. v. B. & O. R. R. Co.*, 84 (88).

Complainant sought to have Commission equalize Tacoma and Seattle with Portland as slaughtering centers. Due to her natural location Portland has certain advantages as a live-stock market and the prevailing prices of live stock are somewhat lower there than cities on the Sound. This condition is not due to any unjust arrangement of rates, and it is not a function of the Commission to equalize communities in matters of this character. *Carstens Packing Co. v. O. & W. R. R. Co.*, 77 (81).

Power has not been lodged with this tribunal to equalize economic advantages, to place one market in competition with another, or to treat all railroads as a part of one great whole, apportion to each a certain territory, or require all to meet upon a common basis at all points. *Ashland Fire Brick Co. v. S. Ry. Co.*, 115 (121).

Commission can not equalize greater cost of construction and operation of canning factory in Colorado than on Missouri River and at other points. *Empson Packing Co. v. C. M. Ry. Co.*, 268 (270).

ESTIMATED WEIGHTS.

Western classification rule under which crude oil is estimated to weigh as much as or more than its actual weight, and gas oil, used for the same purposes, is estimated to weigh substantially less than its actual weight, held to be unjustly discriminatory. *Sun Co. v. I. S. R. R. Co.*, 194.

Shipment in "one-third" crates at actual weights, properly assessed on that basis, though estimated weighs on "standard" crates less than three times actual weights of "one-third" crates. *Byrnes v. A. T. & S. F. Ry. Co.*, 585.

ESTOPPEL.

To hold that a carrier may not withdraw a rate found by the Commission in another case to be unreasonably low merely because that rate was voluntarily established in the first place would amount to requiring unjust preference, and to setting aside the fundamental principle that rates must be uniform under similar conditions. *Fairmont Creamery Co. v. C. B. & Q. R. R. Co.*, 252 (254).

Neither carrier nor Commission should disturb long-standing system of rates without considering effect on property interests; but when rate is unlawful it should be corrected though it destroys property rights. *Albee v. B. & M. R. R.*, 303 (315).

Power of Commission to refuse advance on ground of agreement between carrier and shipper to maintain lower scale doubted. *In re Advances on Vehicles*, 124 (126).

EVAPORATED MILK.

The difference between evaporated milk and condensed milk is found in the density of the liquid, while no sweetening is used in the former. It takes the place of fresh milk where that article can not be had. Being sterilized, it can be kept indefinitely. *Whitehead Canning Co. v. P. C. C. & St. L. Ry. Co.*, 261 (262).

EXPORT RATE.

Rate on flour from Elder, Kans., to New Orleans, for export, found unreasonable compared with rates established by carriers from other near-by competitive milling points. *R. R. Com. of Kans. v. M. P. Ry. Co.* 24.

FERTILIZER.

Constituent elements of fertilizer are often used separately as fertilizers.

Acid phosphate, while a material entering into manufacture of a fertilizer, is itself a fertilizer and must take fertilizer rates. *Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co.* 394 (396).

Statement of process of manufacture. *International Agricultural Corporation v. L. & N. R. R. Co.* 488.

FOREIGN COMMERCE.

That part of a continuous haul from a foreign country which is confined to a rail transportation from a port of entry to a point in the same State is within the jurisdiction of the Commission though the shipment does not move under through billing nor do the water and rail lines operate under any common control or management. *In re Rates, etc., of Louisiana Ry. & Nav. Co.* 558.

GROUP RATES.

Commission has repeatedly recognized and approved the grouping of points, within reasonable limits, for the purpose of making rates, and it will not disturb such groupings in the absence of proof that as to particular points in the zone the adjustment results in unreasonable rates or undue prejudice and disadvantage. *Stiritz v. N. O. M. & C. R. R. Co.* 578 (581).

In application of group rates a discrimination of necessity arises between near and far edge of group; but in most cases this discrimination is not undue. *Southwestern Missouri Millers' Club v. M. K. & T. Ry. Co.* 422 (424).

Extravagant rates ought not to be imposed upon 90 per cent of traffic in group upon pretext that more favorable rate is granted to other 10 per cent. *Southwestern Missouri Millers' Club v. M. K. & T. Ry. Co.* 422 (425).

Commission has never approved of group rate which imposed upon any part of group an unjust and unreasonable or unduly discriminating transportation charge. *Southwestern Missouri Millers' Club v. M. K. & T. Ry. Co.* 422 (425).

Complaint under section 3 of the act that Laredo, Tex., is not put in Texas common-point territory held not sustained. *Board of Trade of Laredo v. I. & G. N. R. R. Co.* 28.

Rate on hardwood lumber from eastern producing territory to Pacific coast terminals prescribed. *Michigan Hardwood Manufacturers' Asso. v. Transcontinental Frt. Bur.* 387.

Any grouping, whether of rates, localities, or commodities, must not be unreasonable or result in unjust discrimination. *Sun Co. v. I. S. R. R. Co.* 194 (197).

ICING.

Carrier provided that if refrigeration was desired by per-can shippers of milk, they should deliver their cans to leased-car shippers who would charge regular railroad per-can rates and a stated icing charge. This requirement is unlawful in view of recent addition of section 15 of the act, which makes it unlawful for a carrier to disclose to one shipper another's business secrets. *Albree v. B. & M. R. R.* 303 (321).

IMPORT RATE.

Inland proportional rate on sugar from New Orleans or Port Chalmette, La., to Gramercy, La., not found unlawful. *In re Rates, etc., of Louisiana Ry. & Nav. Co.* 558.

INCIDENTAL SERVICE.

Trimming or leveling coal in the holds of ships is a necessary service in connection with the transportation of coal by water, and, where performed by the rail carriers, it must be regarded as a part of the delivery. Whether or not defendants might legally be compelled to render such service, when they undertake to do so, any charge therefor is subject to regulation by the Commission. *New England Coal & Coke Co. v. N. & W. Ry. Co.* 308.

INDUSTRIAL SWITCHING. See SWITCHING SERVICE.**INTERCHANGE OF EQUIPMENT.**

Carriers required to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon through routes and for the operation of such through routes, and where they have failed in this respect the Commission is empowered to determine the individual or joint regulation or practice that is just, fair, and reasonable. *Missouri & Illinois Coal Co. v. I. C. R. R. Co.* 39.

INTERSTATE COMMERCE.

Under tariffs, carriers agree to switch, upon order of consignee, cars loaded with grain consigned to Chicago. Transportation service to be performed by carrier is not ended until cars are given terminal delivery directed by consignees. It follows that switching service did not constitute a local transaction subject to the laws of Illinois, but that charges were subject to the act to regulate commerce. *Badenoch Co. v. C. & N. W. Ry. Co.* 36 (37).

The fact that through tickets are not used or through rates paid does not prove the transportation to be other than interstate. A through route exists over which passengers are actually transported by continuous carriage, and the fact that joint rates or fares may not now be in force does not prove that the transportation is not interstate in character. *Citizens of Somerset v. Washington Ry. & Elec. Co.* 187 (191).

That part of a continuous haul from a foreign country which is confined to a rail transportation from a port of entry to a point in the same State is within the jurisdiction of the Commission though the shipment does not move under through billing nor did the water and rail lines operate under any common control or management. *In re Rates, etc., of the Louisiana Ry. & Nav. Co.* 558.

Movement of shipment between points in a State and a subsequent movement out of the State is, as to the first shipment, not interstate commerce, where there is nothing to connect the two shipments, either in the billing or the charges imposed. *Johnson v. M. St. P. & S. S. M. Ry. Co.* 235.

Shipment between two points in same State, passing en route through another State, is interstate commerce. *Willman & Co. v. St. L. I. M. & S. Ry. Co.* 405.

Shipment from points in Minnesota to Duluth, passing en route through Wisconsin, are interstate. *Bridgeman-Russel Co. v. G. N. Exp. Co.* 573.

INTERSTATE COMMERCE COMMISSION.

Commission does not sit as supreme traffic manager for the railroads of the country. Consideration of the policy which they may pursue is not a matter delegated to it so long as such policy does not infringe upon the prohibitions of the law. *In re Advances on Coal to Lake Ports*, 604 (612).

INVESTIGATION.

Commission can not determine what rates are reasonable for the transportation of other commodities or rates on the same commodities from other points, upon a complaint dealing with specific kinds of commodities from a particular locality. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (101).
 Interests affected too extensive for determination upon present complaint. *Kleibacker v. L. & N. R. R. Co.* 420.

ISSUE.

Fact that issue raised by petition is not as broad as it might have been if other carriers had been made parties can furnish no warrant for a refusal to pass upon matters clearly embraced within it. *Chattanooga Feed Co. v. A. G. S. R. R. Co.* 480 (485).

With only one carrier as party defendant, issue can not be broadened to embrace matters which were brought into existence by other carriers, and for which defendant alone is in no sense responsible. *Chattanooga Feed Co. v. A. G. S. R. R. Co.* 480 (485).

Where no complaint or evidence in regard to violation of long and short haul clause, matter can not be considered in petition attacking reasonableness, relatively and per se, of the rates. *Chamber of Commerce of Augusta v. S. Ry. Co.* 233 (238).

JOBBER'S RATES.

No merit in contention that the combination and the through rate shall be equal. *El Dorado Oil Mills & Fertilizer Co. v. C. R. I. & P. Ry. Co.* 286 (287).

Complaint that because through rates are much lower than combination on intermediate point such intermediate point can not compete with points from which through rate applies can not be settled by reduction of local rates from such intermediate point. *R. R. Com. of Nev. v. N. O. O. Ry. Co.* 205 (215).

Combination of locals into jobbing center compared with lower combination of local up to same jobbing center plus a proportional beyond, and found unreasonable. *Lindsay Bros. v. L. S. & M. S. Ry. Co.* 516.

JOINT RATE.

Initial line publishing joint rate lower than combination without securing concurrence of connections must nevertheless protect such rate to a shipper who made a contract based on the lower rate. *De Camp Bros. & Yule Iron, Coal & Coke Co. v. V. & S. W. Ry. Co.* 274.

Initial line publishing what purports to be a joint tariff, but which is not a legal tariff, because not concurred in by connections, is liable in damages for whatever amount shipper suffers. *Edison Portland Cement Co. v. D. L. & W. R. R. Co.* 382.

As between two joint tariffs, naming different rates between the same points, the one properly concurred in is the legal rate, though it names higher charges than the other. *Kennedy & Co. v. St. L. S. W. Ry. Co.* 277.

A joint rate over several lines not concurred in by such connecting lines is in direct contravention of the rules of the Commission made under section 6. *De Camp Bros. & Yule Iron, Coal & Coke Co. v. V. & S. W. Ry. Co.* 274 (276).

Supplement proposing to cancel joint rate, leaving in effect higher combination charge, suspended. *In re Advances in Class Rates*, 338.

JURISDICTION.

Jurisdiction over that part of continuous haul from foreign country which is confined to rail transportation from port of entry to another point in same state. *In re Rates, etc., of Louisiana Ry. & Nav. Co.* 558.

JURISDICTION—Continued.

Power to forbid discrimination in making allowances at one point while denying them at another similarly situated. *Suffern Grain Co. v. I. C. R. R. Co.* 183.

Commission can award damages only for violation of the act. It has no authority to administer a remedy in applications for relief based solely upon a contractual relation. *Wood-Mosaic-Flooring & Lumber Co. v. L. & N. R. R. Co.* 458 (459).

No jurisdiction to enforce specific performance of a contract relating to switch connections nor to award damages for its breach. *Italston Townsite Co. v. M. P. Ry. Co.* 354 (355).

Commission has power to determine reasonableness of differences in rates on various commodities. *In re Advances on Coal to Lake Ports*, 604 (623).

Not function of Commission to equalize commercial conditions or establish trade zones. *In re Advances on Coal to Lake Ports*, 604 (613).

Commission can not undertake to establish rates that will guarantee profit to producers. *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.* 11 (14).

Commission has no jurisdiction to correct tariff insufficiencies by the freight rate nor to protect in that way American against foreign producers. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (151).

Commercial conditions which Commission has no authority to consider. *Empson Packing Co. v. C. M. Ry. Co.* 268 (270).

No jurisdiction to equalize economic advantages. *Ashland Fire Brick Co. v. S. Ry. Co.* 115 (121).

LEGAL RATE.

Where an initial line publishes and maintains one joint tariff, which is not properly concurred in by its connections, and at the same time another joint tariff naming higher rates and properly concurred in, the latter tariff names the legal rate and must be applied. *Kennedy & Co. v. St. L. S. W. Ry. Co.* 277.

The lawfully established rate is the rate that must be applied notwithstanding the erroneous quotation of other rates. *McLean Lumber Co. v. L. & N. R. R. Co.* 349 (352).

LOADING.

Long and bulky articles should be transported in box cars in every case where it is possible to do so, and when so transported they should be charged regular rates for less-than-carload shipments. When shipment, solely because of its length or bulk, is actually transported on an open car, the rule applying a higher rate and minimum may be enforced. *Merchants & Mfrs. Asso. of Baltimore v. A. C. L. R. R. Co.* 467 (470).

Any charge by defendants for readjusting load of piling or poles, made necessary by shifting, improper loading, or heavy grades, must be provided for by proper tariff rule. *California Pole & Piling Co. v. S. P. Co.* 507 (509).

LOCAL RATES.

Where the spread between the local rates and the divisions of through rates between the same points is large, the local rates should be carefully scrutinized. *R. R. Com. of Nev. v. N. C. O. Ry. Co.* 205 (210).

LOCALITIES.

Acme, Tex., from Sapulpa, Okla. Fuel oil, 283.

Akron, Ohio, from New Village, N. J. Cement, 382.

Alabama to Linwood, Kans. Crossties, 472.

Alexandria territory from Joplin group. Grain, 422.

Alexandria, La., from Perla, Ark. Fire brick, 181.

Appalachia, Va., to Rusk, Tex. Coke, 274.

LOCALITIES—Continued.

- Arizona from Creamery, Ariz. Condensed milk, 218.
 Arizona from Phoenix, Ariz. Barley, bran, and wheat, 216.
 Arkansas to Memphis, Tenn. Cotton seed, 537, 548.
 Ashland, Ky., to Birmingham, Ala. Fire brick, 115.
 Ashtabula Harbor, Ohio, from Pittsburgh district. Coal, 640.
 Atlanta from Omaha. Grain, 62.
 Atlantic seaboard from Pacific coast. Lemons, 149.
 Augusta, Ga., from Coal Creek mines, Tenn. Coal, 233.
 Baltimore to Barnwell, S. C., Nashville, Tenn., and Selma, N. C. Iron girders, 467.
 Baltimore to Bluefield, W. Va. Class rates, 519.
 Baltimore from Illinois and Indiana. Grain, 596.
 Barnwell, S. C., from Baltimore. Iron girders, 467.
 Baybridge, Ohio, to Detroit. Cement, 90.
 Birmingham, Ala., from Kentucky and Ohio. Fire brick, 115.
 Birmingham, Ala., from Laurinburg, N. C. Cottonseed hulls, 4.
 Blodgett, Mo., to Minneapolis and St. Paul, Minn. Watermelons, 138.
 Blodgett, Mo., to St. Joseph, Mo. Fruit, 405.
 Bluefield, W. Va., from east and west. Class rates, 519.
 Boston, Mass., from points north of Massachusetts. Milk, 303.
 Buff City, Kans., to Lewis, Iowa. Brick, 141.
 Buffalo from Duluth, Minneapolis, and St. Paul. Class rates, 338.
 Buffalo to Pacific coast terminals. Stamped ware, 565.
 Cairo, Ill., from Houston and Louisville, Miss., and intermediate points. Crossties, 578.
 Cairo, Ill., to Plano, Tex. Grain, 360.
 California to eastern points. Lemons, 149.
 California from Creamery, Ariz. Condensed milk, 218.
 California from Oregon. Poles and piling, 506.
 Carthage, Mo., from Waukegan, Ill. Plain wire, 513.
 Charleston, S. C., to Gainesville, Ga. Acid phosphate, 394.
 Charlotte, N. C., to New York. Cotton waste, 293.
 Chattanooga, Tenn., to Collinsville, Ala. Grain, 480.
 Chicago to Bluefield, W. Va. Class rates, 519.
 Chicago from Dayton, Ohio. Bicycles, 291.
 Chicago from Harrisburg field, Ill. Coal, 341.
 Chicago from Hurley, S. Dak. Oats, 34.
 Chicago. Switching of grain, 36.
 Chicago to Portland. Adding-machine paper, manila paper filing folders, 442.
 Cincinnati to Bluefield, W. Va. Class rates, 519.
 Cincinnati to Portland. Manila paper filing folders, 442.
 Coal Creek mines, Tenn., to Augusta, Ga. Coal, 233.
 Coffeyville, Kans., to Oakland, Iowa. Brick, 141.
 Coffeyville, Kans., to Shelby, Iowa. Brick, 141.
 Coffeyville, Kans., to Spokane, Wash. Roofing material, 588.
 Collinsville, Ala., from Chattanooga, Tenn. Grain, 480.
 Colorado to Pacific coast. Canned peas, 268.
 Columbus, Ohio, to Bluefield, W. Va. Class rates, 519.
 Concordia, Kans., to Crete, Nebr. Cream, 252.
 Conway, Ark., from Omaha, Nebr. Grain, 249.
 Copperhill, Tenn., to North Carolina, South Carolina, Georgia, and Florida. Sulphuric acid, 488.

LOCALITIES Continued.

- Creamery, Ariz., to Arizona, California, and New Mexico. Condensed milk, 218.
- Crete, Nebr., from Concordia, Kans. Cream, 252.
- Dayton, Ohio, to Chicago. Bicycles, 291.
- Dayton, Ohio, from Sumrall, Miss. Yellow-pine lumber, 403.
- Dearborn, Tex., to Upland, Nebr. Lumber, 75.
- Decatur, Ill., milling in transit. Corn, 178.
- Denver from Minneapolis. Class rates, 259.
- Denver from St. Louis. Iron and steel products, 477.
- Des Moines, Iowa, from Stoy, Ill. Crude oil, 194.
- Detroit group cement mills to C. F. A. territory. Cement, 84.
- Detroit from Michigan, Indiana, and Ohio. Cement, 90.
- Detroit to Seattle, Wash. Show cases, 106.
- Diamondville, Wyo., from Wilmington, Del. Car wheels, 120.
- Drummond, Md., from Washington, D. C. Passenger fares, 188.
- Duluth to Buffalo, Pittsburgh, etc. Class rates, 338.
- Duluth from Minnesota points. Milk, 573.
- Durham, N. C., allowances. Coal, 51.
- East Durham, N. C., allowances. Coal, 51.
- El Dorado, Ark., from Ruston, La. Fertilizer materials, 296.
- El Paso, Tex., to Phoenix, Ariz. Class rates, 279.
- Elkhart, Ind., to Los Angeles and Oakland, Cal. Gocarts, 570.
- Elkhart, Ind., to Milwaukee. Vehicles, 516.
- Esmond, S. Dak., to Minneapolis. Flaxseed and wheat, 346.
- Evansville, Ind., from Humboldt and McKenzie, Tenn. Logs, 1.
- Florida from Copperhill, Tenn. Sulphuric acid, 488.
- Florida producing points to base points for reshipment beyond. Pineapples, citrus fruits, and vegetables, 11.
- Fort Scott, Kans., to Memphis, Tenn., and Lawton, Okla. Counters and shelving, 590.
- Fort Worth, Tex., from producing points in Oklahoma, New Mexico, and Texas. Live stock, 160.
- Fort Worth, Tex., to various points. Fresh meats and packing-house products, 160.
- Friendship Heights, Md., from Washington, D. C. Passenger fares, 188.
- Gainesville, Fla., from Charleston, S. C. Acid phosphate, 394.
- Gallup, N. Mex., to Tempe and Mesa, Ariz. Coal, 221.
- Gas, Kans., to Walnut, Iowa. Brick, 141.
- Georgetown, S. C., from Pocahontas district, W. Va. Coal, 144.
- Georgia from Copperhill, Tenn. Sulphuric acid, 488.
- Glen Elder, Kans., to New Orleans. Flour, 24.
- Gordo, Ala., from Toledo, Ohio. Farm wagons, 400.
- Gramercy, La., from New Orleans and Port Chalmette. Sugar, 559.
- Grand Rapids, Mich., to Portland, Oreg. Manila paper filing folders, 442.
- Haldeman, Ky., to Birmingham, Ala. Fire brick, 115.
- Harrisburg field, Ill., to Chicago and Milwaukee. Coal, 341.
- Hayward, Ky., to Birmingham, Ala. Fire brick, 115.
- Holcomb, Mo., to Minneapolis and St. Paul. Watermelons, 138.
- Horatio, Ark., from Wynne, Ark. Fruit baskets, 288.
- Houston, Miss., to Cairo, Ill. Crockets, 578.
- Houston, Tex., to Lake Charles, La. Dressed meats, 456.
- Houston, Tex., to New Orleans. Packing-house products, 456.

LOCALITIES—Continued.

- Humboldt, Kans., from Sapulpa, Okla. Crude petroleum oil, 363.
 Humboldt, Tenn., to Evansville, Ind. Logs, 1.
 Hurley, S. Dak., to Chicago, Ill. Oats, 34.
 Idaho points to Tacoma, Wash. Live stock, 8.
 Illinois to Baltimore, Md. Grain, 596.
 Indiana to Baltimore, Md. Grain, 596.
 Indiana to Detroit, Toledo, and Sandusky. Cement, 90.
 Ingram, Wis., to Stevens Point, Wis. Lumber, 255.
 Iowa to Interstate destinations. Chautauqua outfits, 135.
 Ironton, Ohio, to Birmingham, Ala. Fire brick, 115.
 Ivy Rock, Pa. Switching, 540.
 Joplin group, Mo., to Little Rock territory. Corn and wheat, 422.
 Kansas to Mississippi River crossings. Window glass, 391.
 Kansas field to Missouri River. Salt, 407.
 Kansas City, Mo. Switching charges on packing-house products, 385.
 Kansas City from southern destinations. Ties, 471.
 Knoxville, Tenn., from Richmond, Va. Boat spikes, 582.
 Lake Charles, La., from Houston, Tex. Dressed meats, 456.
 Lake ports from Pittsburgh district. Coal, 640.
 Lake ports from West Virginia. Coal, 604.
 Laredo, Tex., from eastern defined territory. Class and commodity rates, 24.
 Laurel, Md., to Washington, D. C., and intermediate points. Passenger fares, 201.
 Laurinburg, N. C., to Birmingham, Ala. Cottonseed hulls, 4.
 Lawrenceville, Va., from Monessen, Pa. Iron wire fencing, 223.
 Lawton, Okla., from Fort Scott, Kans. Counters and shelving, 590.
 Lewis, Iowa, from Bufl City, Kans. Brick, 141.
 Linwood, Kans., from various points. Crossties, 472.
 Little Rock, Ark., transit privilege. Grain, 249.
 Little Rock territory from Joplin group. Corn and wheat, 422.
 Los Angeles from Elkhart, Ind. Gocarts, 570.
 Los Angeles from Phoenix, Ariz. Cattle and sheep, 429.
 Louisiana to Linwood, Kans. Crossties, 472.
 Louisiana to Memphis, Tenn. Cottonseed, 548.
 Louisville from McLean's Spur, Ky. Logs, 458.
 Louisville, Ky., from southern points. Lumber, 239.
 Louisville, Miss., to Cairo, Ill. Crossties, 578.
 McKenzie, Tenn., to Evansville, Ind. Logs, 1.
 McLean's Spur, Ky., to Louisville. Logs, 458.
 Manheim, W. Va., to C. F. A. and trunk-line territory. Cement, 446.
 Marlon, Ind., to Oakland, Cal. Iron beds and wire mattresses, 272.
 Marne, Iowa, from Tyro, Kans. Brick, 141.
 Maryland ports. Trimming charges on coal, 398.
 Memphis, Tenn., from Arkansas, Louisiana, Missouri, and Oklahoma. Cotton seed, 537, 548.
 Memphis, Tenn., from Fort Scott, Kans. Counters and shelving, 590.
 Mesa, Ariz., from Gallup, N. Mex. Coal, 221.
 Michigan points to Detroit, Toledo, and Sandusky. Cement, 90.
 Michigan to Pacific coast terminals. Hardwood lumber, 387.
 Michigan to Texas. Cedar poles, 378.
 Milwaukee from Elkhart, Ind. Vehicles, 516.
 Milwaukee from Harrisburg field, Ill. Coal, 341.

LOCALITIES—Continued.

- Minneapolis to Buffalo, Pittsburgh, etc. Class rates, 338.
 Minneapolis to Denver. Class rates, 259.
 Minneapolis from Esmond, S. Dak. Flaxseed and wheat, 346.
 Minneapolis from Holcomb and Blodgett, Mo. Watermelons, 138.
 Minneapolis from New York. Brimstone, 108.
 Minnesota to Duluth. Milk, 573.
 Minnesota to Interstate destinations. Chautauqua outfits, 135.
 Minnesota from Sioux City, Iowa. Class rates, 110.
 Minnesota producing points to Superior, Wis. Pulp wood, 504.
 Mississippi to Linwood, Kans. Crossties, 472.
 Mississippi River crossings from Kansas. Window glass, 391.
 Missouri to Memphis, Tenn. Cotton seed, 537, 548.
 Missouri to Interstate destinations. Chautauqua outfits, 135.
 Missouri River from Kansas field. Salt, 407.
 Monessen, Pa., to Lawrenceville, Va. Iron wire fencing, 223.
 Monroe, La., from Perla, Ark. Fire brick, 131.
 Monroe, La., from St. Louis. Apples, 277.
 Monroe, N. C., from Youngstown, Ohio. Sheet iron, 223.
 Morrilton, Ark., from Omaha, Nebr. Grain, 249.
 Nashville, N. C., from Baltimore. Iron girders, 467.
 New Bedford, Mass., from Vicksburg, Miss. Cotton, 21.
 New Brunswick, N. J., from North Birmingham, Ala. Hardwood lumber, 349.
 New Mexico points from Creamery, Ariz. Condensed milk, 218.
 New Orleans. Demurrage, 358.
 New Orleans from Glen Elder, Kans. Flour, 24.
 New Orleans to Gramercy, La. Sugar, 558.
 New Orleans from Houston, Tex. Packing-house products, 456.
 New Orleans to Pittsburgh. Canned okra, 420.
 New Orleans to Richmond, Va. Bridge material, 281.
 New Orleans to Sioux City, Iowa. Sugar, 60.
 New Village, N. J., to Akron, Ohio. Cement, 382.
 New York to Bluefield, W. Va. Class rates, 519.
 New York from Charlotte, N. C. Cotton waste, 203.
 New York to Minneapolis. Brimstone, 108.
 Newport, Tenn., milling in transit, 82.
 North Birmingham, Ala., to New Brunswick, N. J. Hardwood lumber, 349.
 North Birmingham, Ala., to Philadelphia, Pa. Hardwood lumber, 349.
 North Carolina from Copperhill, Tenn. Sulphuric acid, 488.
 North Carolina from Suffolk, Va. Vehicles, 124.
 Oak Hill, Ohio, to Birmingham, Ala. Fire brick, 115.
 Oakland, Cal., from Elkhart, Ind. Gocarts, 570.
 Oakland, Cal., from Marion, Ind. Iron beds and wire mattresses, 272.
 Oakland, Iowa, from Coffeyville, Kans. Brick, 141.
 Ohio to Detroit, Toledo, and Sandusky. Cement, 90.
 Ohio River crossings from Toledo, Ohio. Vehicles, 93.
 Oklahoma to Memphis, Tenn. Cotton seed, 548.
 Oklahoma City from producing points. Live stock, 100.
 Olive Hill, Ky., to Birmingham, Ala. Fire brick, 115.
 Omaha. Signatures to vouchers, 146.
 Omaha to Atlanta. Grain, 62.
 Omaha to Conway and Morrilton, Ark. Grain, 249.
 Oregon. Through routes, 209.

LOCALITIES—Continued.

- Oregon to California. Poles and piling, 506.
 Oregon to Tacoma, Wash. Live stock, 8.
 Ottumwa, Iowa, from Stoy, Ill. Crude oil, 194.
 Pacific coast to Atlantic seaboard. Lemons, 149.
 Pacific coast from Buffalo, N. Y. Stamped ware, 565.
 Pacific coast from Colorado. Canned peas, 268.
 Pacific coast from Michigan. Hardware lumber, 387.
 Paducah, Ky., to points south. Stave and heading bolts, 226.
 Perla, Ark., to Ruston, Monroe, Tallulah, Winnfield, Alexandria, and Shreveport, La., 131.
 Philadelphia to Bluefield, W. Va. Class rates, 519.
 Philadelphia from North Birmingham, Ala. Hardwood lumber, 349.
 Phoenix, Ariz., to Arizona. Barley, bran, and wheat, 216.
 Phoenix, Ariz., from El Paso, Tex. Class rates, 279.
 Phoenix, Ariz., to Los Angeles. Cattle and sheep, 429.
 Pittsburgh to Bluefield, W. Va. Class rates, 519.
 Pittsburgh from Duluth, Minneapolis, and St. Paul. Class rates, 338.
 Pittsburgh from New Orleans. Canned okra, 420.
 Pittsburgh district to Lake ports. Coal, 640.
 Plano, Tex., from Cairo, Ill. Grain, 360.
 Plano, Tex., from St. Louis, Mo. Grain, 360.
 Pocahontas district, W. Va., to Georgetown, S. C. Coal, 144.
 Port Chalmette, La., to Gramercy, La. Sugar, 558.
 Portland, Oreg., from Chicago, Cincinnati, and Grand Rapids. Adding-machine paper, manila-paper filing folders, 442.
 Portland, Oreg., and grouped points from San Francisco and grouped points. Class rates, 366.
 Portland, Oreg., to Seattle and Tacoma, Wash. Live stock, 77.
 Portsmouth, Ohio, to Birmingham, Ala. Fire brick, 115.
 Ralston, Nebr. Sidetrack, 354.
 Reno, Nev., to points on N. C. O. Ry., 205.
 Richmond, Va., to Knoxville, Tenn. Boat spikes, 582.
 Richmond, Va., from New Orleans. Bridge material, 281.
 Rocky Ford district, Colo., to eastern destinations. Cantaloupes, 585.
 Rusk, Tex., from Appalachia, Va. Coke, 274.
 Ruston, La., to El Dorado, Ark. Fertilizer materials, 286.
 Ruston, La., from Perla, Ark. Fire brick, 131.
 St. Clair, Ill., to various interstate points. Coal, 39.
 St. Joseph, Mo., from Blodgett, Mo. Fruit, 405.
 St. Louis, Mo. Elevator allowances, 496.
 St. Louis to Denver. Iron and steel products, 477.
 St. Louis to Monroe, La. Apples, 277.
 St. Louis to Plano, Tex. Grain, 360.
 St. Paul from Blodgett and Holcomb, Mo. Watermelons, 138.
 St. Paul to Buffalo, Pittsburgh, etc. Class rates, 338.
 San Francisco and grouped points to Portland, Oreg., and grouped points. Class rates, 366.
 Sandusky, Ohio, from Michigan, Indiana, and Ohio. Cement, 90.
 Sapulpa, Okla., to Acme, Tex. Fuel oil, 283.
 Sapulpa, Okla., to Humboldt, Kans. Crude petroleum oil, 363.
 Seattle, Wash., from Detroit, Mich. Show cases, 106.

LOCALITIES—Continued.

- Seattle, Wash., from Portland, Oreg. Live stock, 77.
 Selma, N. C., from Baltimore. Iron girders, 467.
 Shelby, Iowa, from Coffeyville and Tyro, Kans. Brick, 141.
 Shreveport, La., from Perla, Ark. Fire brick, 131.
 Sioux City, Iowa, from New Orleans. Sugar, 60.
 Sioux City, Iowa, to southwestern Minnesota. Class rates, 110.
 Sioux Falls, S. Dak., from Stoy, Ill. Crude oil, 194.
 Smithville, Tex., from Toledo, Ohio. Farm wagons, 511.
 Somerset, Md., from Washington, D. C. Passenger fares, 188.
 South Carolina from Copperhill, Tenn. Sulphuric acid, 488.
 South Carolina from Suffolk, Va. Vehicles, 124.
 Spokane, Wash., from Coffeyville, Kans. Building material, 588.
 Stevens Point, Wis., from Ingram, Wis. Lumber, 255.
 Stoy, Ill., to Des Moines, Ottumwa, and Sioux Falls. Crude oil, 194.
 Stroth, Ind., to Detroit. Cement, 90.
 Suffolk, Va., to North and South Carolina. Vehicles, 124.
 Sumrall, Miss., to Dayton, Ohio. Yellow-pine lumber, 463.
 Superior, Wis., from Minnesota producing points. Pulp wood, 594.
 Tacoma, Wash., from Idaho and Oregon. Live stock, 8.
 Tacoma, Wash., from Portland, Oreg. Live stock, 77.
 Tallulah, La., from Perla, Ark. Fire brick, 131.
 Tempe, Ariz., from Gallup, N. Mex. Coal, 221.
 Texas to Linwood, Kans. Crossties, 472.
 Texas from Michigan and Wisconsin. Cedar poles, 378.
 Toledo, Ohio, to Gordo, Ala. Farm wagons, 460.
 Toledo, Ohio, from Michigan, Ohio, and Indiana. Cement, 90.
 Toledo, Ohio, to Ohio River crossings and Virginia cities. Vehicles, 93.
 Toledo, Ohio, to Smithville, Tex. Farm wagons, 511.
 Tyro, Kans., to Marne and Shelby, Iowa. Brick, 141.
 Upland, Nebr., from Dearborn, Tex. Lumber, 75.
 Vicksburg, Miss., to New Bedford, Mass. Cotton, 21.
 Virginia cities, from Toledo, Ohio. Vehicles, 93.
 Virginia ports. Trimming charges on coal, 308.
 Walnut, Iowa, from Gas, Kans. Brick, 141.
 Walsenburg Dist., Colo., to points on Santa Fe. Coal, 264.
 Washington, D. C., to Drummond, Friendship Heights, and Somerset, Md.
 Passenger fares, 188.
 Washington, D. C., to Laurel, Md., and intermediate points. Passenger
 fares, 201.
 Waukegan, Ill., to Carthage, Mo. Plain wire, 513.
 West Virginia to Lake ports. Coal, 604.
 Whiteland, Ind., to all points in Official Classification Territory. Evaporated
 milk, 201.
 Wichita, Kans., from producing points. Live stock, 160.
 Wilderman, Ill., to various interstate points. Coal, 30.
 Wilmington, Del., to Diamondville, Wyo. Car wheels, 129.
 Winfield, La., from Perla, Ark. Fire brick, 131.
 Wisconsin to Texas. Cedar poles, 378.
 Wynne, Ark., from Horatio, Ark. Fruit baskets, 288.
 Youngstown, Ohio, to Monroe, N. C. Sheet iron, 223.
 Yuma, Ariz., from eastern destinations. Merchandise, 185.

LOCATION.

Each community is entitled to a reasonable rate, which should in addition be fairly adjusted with reference to one another. Any locality which remains at a disadvantage after this must sustain that burden, which is due to its location with respect to the business. In re Investigation of Rates on Meats, 160 (163).

City entitled to advantages of its location. *Carstens Packing Co. v. O. & W. R. R. Co.* 77 (81).

LONG AND SHORT HAUL.

If applicant for relief controls long-distance rate and can determine what effect shall be given to competitive conditions which are supposed to justify the reduction at the farther point, then Commission may also determine whether carrier is justified in giving to those competitive conditions the effect which it does—may determine the effect which such conditions might properly have, and may fix the extent to which those conditions shall be given effect. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (531).

It is possible that cases might arise where, even though the long-distance rates were beyond control of applicant for relief, nevertheless, some relation ought to be established between the rates to the more distant and those to intermediate points. Intermediate rates should not, for example, exceed the long-distance rates, plus a reasonable local charge from more remote back to intermediate points and should perhaps, in some cases, be even less. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (531).

Contention of defendant that it is neither the duty of Commission, nor was it contemplated by Congress, that Commission should give consideration to intermediate rates, where justification was shown by the existence of water competition at the more distant point for lower rates than to the nearer points, not sustained. In re Application of Southern Pacific Co. 366.

Relieving power of Commission not to be exercised arbitrarily, but it is its duty to permit higher intermediate charge whenever resulting rates will not contravene the act in that they are unjust and unreasonable or unduly discriminatory. This embraces both the preference against the intermediate point and the rate which that point is required to pay. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (530).

After determining existence of competitive influence at farther distant point, next question is, Have those influences reduced rates to that point below what would be reasonable? For if the rates to the farther distant point are sufficiently high, these ought not to be exceeded at a point with above 100 miles shorter haul. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (526).

Congress has said to carriers of interstate commerce by rail that they must not charge more for the short than for the long haul, unless they can show to the satisfaction of the Commission that in so doing their rates do not violate the inhibition of the act as expressed in both the first and third sections. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (530).

While the existence of a wrong can not, of itself, justify its continuance, still, in determining what, under all the circumstances, is just and reasonable, in pursuance of the authority delegated to the Commission by the amended fourth section, it must certainly be to some extent guided by conditions as it finds them. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (525).

LONG AND SHORT HAUL--Continued.

When no complaint as to reasonableness of intermediate rates, Commission assumes them just and reasonable, and proceeds accordingly. Relieving order, if granted, would in such case be conditioned that present charges should not be exceeded. *Bluefield Shippers' Assn. v. N. & W. Ry. Co.* 519 (530).

The Chesapeake & Ohio has, ever since the passage of the act, observed the rule of the fourth section; that is, it makes no higher rate at any point upon its line than that to a more distant point. *Bluefield Shippers' Assn. v. N. & W. Ry. Co.* 519 (523).

Competition at Missouri River of Michigan salt with Kansas salt produces low rates, but not such unduly low rates as to justify lines serving Kansas field making higher rates to intermediate points. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (419).

In determining questions under section 4, rates of the same kind must be compared with one another. In other words, transshipment rates must be compared with transshipment rates, proportional rates with proportional rates, and so on. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 596 (604).

Policy of Commission is where circuitous route desires to compete with water or rail transportation at a given point it may do so without reducing its intermediate rates. *Gile & Co. v. S. P. Co.* 298 (302).

In deciding questions under the fourth section, each case must stand upon its own facts, and no situation can furnish an exact precedent for another. *Bluefield Shippers' Assn. v. N. & W. Ry. Co.* 519 (526).

Rates from eastern points to Yuma, Ariz., which exceed combination on Los Angeles, Cal., a farther distant point, held unreasonable. *Sanguinetti v. I. C. R. R. Co.* 185.

In passing upon application for relief, Commission must inquire whether rates to intermediate point are reasonable. *Bluefield Shippers' Assn. v. N. & W. Ry. Co.* 519 (529).

Within power of Congress to make absolute prohibition, without exception. In re Application of Southern Pacific Co. 396 (374).

LOW RATE.

To hold that defendant may not withdraw a rate found by the Commission in another case to be unreasonably low merely because that rate was voluntarily established in the first place, would amount to requiring unjust preference, and to setting aside the fundamental principle that rates must be uniform under similar conditions. *Fairmont Creamery Co. v. C. B. & Q. R. R. Co.* 252 (254).

Carriers may not haul a particular class of traffic or traffic for a particular community at less than the cost of the service and recoup themselves from the charges levied against other traffic. In re Rates for Single Packages, etc. 328 (335).

MAINTENANCE OF RATE.

In view of fact that rates attacked were reduced prior to filing of complaint and that present rate has been maintained for more than two years, no requirement as to a rate for the future made. *Aeme Cement Plaster Co. v. St. L. & S. F. R. R. Co.* 283 (285).

Where lower rate found reasonable, in effect more than two years since shipments moved, no order requiring maintenance of rate for the future. *Switzer Lumber Co. v. A. & M. R. R. Co.* 471 (474).

MAINTENANCE OF RATE—Continued.

Rate complained of having been reduced to basis of rate via another junction over same lines, no order of maintenance made. *Humboldt Refining Co. v. M. K. & T. Ry. Co.* 363 (365).

MANILA PAPER FILING FOLDERS.

Are extensively used, have come to be an established article of commerce well known to the business world, and should be relieved from all uncertainty as to transportation rates. No reason why there may not be established a rate specifically applicable to their transportation, stated in terms plain enough to avoid uncertainty of interpretation. *Gill Co. v. O. R. R. & N. Co.* 442 (444).

Distinct article of commerce, and, though made of "manila tag board," not entitled to same rate under tariff. *Gill Co. v. O. R. R. & N. Co.* 442.

MARKET COMPETITION.

Duty imposed by law is to give equal treatment to all shippers who are in a position to demand it, and this includes the right to reach competitive markets on relatively equal terms. Carriers are not required by law, and could not in justice be required, to equalize natural disadvantages, such as location, cost of production, and the like, but they may not in any manner whatsoever unduly prefer one set of shippers entitled to equal treatment over another, or one locality over another. *Elk Cement & Lime Co. v. B. & O. R. R. Co.* 84 (88).

Carriers may not select certain points of production on their lines and give to them the benefit of rates that permit meeting competition of producers located upon other lines, and deny similar treatment to other producing points upon their lines that are similarly situated and as to which the same and long-established general basis of rates applies. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (100).

Competition at Missouri River of Michigan salt with Kansas salt produces low rates, but not such unduly low rates as to justify lines serving Kansas field making higher rates to intermediate points. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (419).

Complainant may not be excluded from selling in a particular market because some other carrier has a through line to that market from another and competing point of production. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (100).

MARKETS.

Neither carriers nor Commission are to dictate where business is to be transacted. *Suffern Grain Co. v. I. C. R. R. Co.* 178 (181).

MARKING PACKAGES.

Storage charges can not begin to accrue until freight has been tendered under such circumstances that consignee is legally obliged to receive the same. If marks on shipment are so obliterated through negligence of carrier that property could not be identified, shipper under no obligation to take what might not be its property. *Kilburn Mills v. N. Y. N. H. & H. R. R. Co.* 21 (22).

MEASURE OF RATE.

Upon investigation of certain advances in rates, the Commission found that, measured by some of the principal tests that experience has taught proper to apply—the per car earnings, the rate per ton per mile, volume and value of traffic, rates from and to similar points moving under substantially similar circumstances and conditions—the advance did not appear to be unreasonable. In re *Advances on Cement*, 90.

MEASURE OF RATE—Continued.

In fixing rates on competitive articles, relation should be determined on basis of difference in cost of service, and many of the other considerations entering into establishment of rates upon independent or isolated articles should be in large part eliminated. *Carstens Packing Co. v. O. & W. R. R. Co.* 77 (81).

Lower rate via longer route no measure of reasonableness, in absence of other evidence, of higher rate via shorter route. *Carstens Packing Co. v. U. P. R. R. Co.* 8 (10).

Comparison of ratings in different classifications is by no means a guide to relative charges unless the class rates under the several classifications are also considered. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (102).

Car earnings, an important element. *Merchants & Manufacturers Assn. v. A. C. L. R. R. Co.* 467 (469).

Competitive rate to one point, not a measure of rate to a non-competitive point. *Georgetown Ry. & Light Co. v. N. & W. Ry. Co.* 144.

Profitableness or unprofitableness of a given industry. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (410).

What weight is to be given to costs, is to be determined in each case. It is generally an important element. *Boileau v. P. & L. E. R. R. Co.* 640 (652).

Effect of rate upon commercial conditions. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (410).

Rate via one line is not of itself proof of unreasonableness of higher rate via competing line. *McLean Lumber Co. v. L. & N. R. R. Co.* 349.

Rate can not be based upon use. *Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co.* 394.

Cost of production, as an element. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (410).

Volume of traffic. *Sioux City Commercial Club v. C. & N. W. Ry. Co.* 112 (114); *Suffern Grain Co. v. I. C. R. R. Co.* 178 (182).

In the end there must be some relation between the cost of service and rates. *Albree v. B. & M. R. R.* 303 (316).

Cost of service, an element. *Albree v. B. & M. R. R.* 303 (327).

Cost of service. In re Rates for Single Packages, 328 (335).

Fairest basis is earnings per car-mile and per train-mile. In re Advances on Coal to Lake Ports, 604 (620).

MILEAGE RATES.

Having prescribed a mileage scale on live stock from producing territory to packing-house centers, the Commission further prescribes a mileage scale on the outbound shipments of packing-house products and fresh meats. In re Investigation of Rates on Meats, 160 (165).

Mileage scale prescribed for transportation of live stock from producing points in Southwest to Fort Worth, Oklahoma City, and Wichita. In re Investigation of Rates on Meats, 160 (165).

MILLING IN TRANSIT.

While decision of Supreme Court in Elevation Allowance cases not entirely clear, Commission seems to be sustained in its contention that it has power to order cessation of discrimination by carriers in allowing milling in transit and granting elevator allowances at one point while denying them at another. *Suffern Grain Co. v. I. C. R. R. Co.* 178 (183).

Because transit privilege allowed at a particular point by one line no reason why it should be ordered in on another line where the circumstances of inbound and outbound shipments over the two roads are dissimilar. *Paducah Coopersage Co. v. N. C. & St. L. Ry. Co.* 226 (231).

MILLING IN TRANSIT—Continued.

A privilege to which shippers not entitled as a matter of right and which will not be ordered established except in case of undue discrimination. *Plano Milling Co. v. St. L. S. W. Ry. Co.* 360 (362).

A privilege which may be granted or withheld by carrier in its discretion so long as no unlawful discrimination results therefrom. *Young & Cutsinger v. L. & N. R. R. Co.* 1 (3).

Outbound shipments alleged to have been the product of lumber moved 18 months after inbound shipments, and privilege can not reasonably extend over so long a period. *Young & Cutsinger v. L. & N. R. R. Co.* 1.

MINIMUM CHARGES.

Reasonableness of rule 15 of Official Classification, providing that no single shipment or small lot of freight of one class will be taken at less than 100 pounds, not determined upon present complaint, issue being too broad and parties affected too numerous to be determined by a complaint strictly inter partes. *Kleibacker v. L. & N. R. R. Co.* 420.

Proposed advance in the minimum charge on less-than-carload shipments in Official Classification territory from 25 cents to 35 cents not justified. In re Rates for Single Packages, etc. 328.

MINIMUM WEIGHTS.

Question of minimum weights on light and bulky articles is a vexed one because of wide differences in cubical capacities of cars. Much attention has been given to it by carriers and much has been done toward harmonizing the difficulties. The minimum weight upon basis of which charges are assessed is nearly, if not quite, as important as the classification rating of the commodity. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (104).

Under tariff, in order to obtain benefit of carload rate on actual weight of overflow, shipment must have moved under one bill of lading. Where shipper executed two bills of lading rule not applicable in terms, and carload rate must be applied on basis of minimum of car furnished for overflow. *Seudder v. T. & P. Ry. Co.* 60.

From a purely transportation standpoint, having reference mainly to the cost of the service, a \$1 rate with a minimum of 34,000 pounds is better business than a minimum of 26,200 pounds at a rate of \$1.15. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (154).

It being in interest of public that lemons should be transported at lowest possible cost to railway, carriers permitted to increase minima. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (154).

MISQUOTATION OF RATES.

The lawfully established rate is the rate that must be applied, notwithstanding the erroneous quotation of other rates. *McLean Lumber Co. v. L. & N. R. R. Co.* 349 (352).

MISROUTING.

Where shipper's bill of lading contains instructions both as to route and rate, and rate is not applicable over any route of receiving carrier, but applicable over route of a rival carrier to which shipment might have been delivered, receiving carrier may forward shipment over its own line at lowest rate lawfully applicable, it not being obliged to turn traffic over to its competitor. *McLean Lumber Co. v. L. & N. R. R. Co.* 349.

MISROUTING—Continued.

If foreign car is available, which under rules as to car service must be sent via a particular line or route, over which a higher rate obtains, agent must explain to shipper that fact and allow shipper to elect whether he will use that car at higher rate or wait for another car. If shipper elects to use car at higher rate, agent should so note on bill of lading. When this rule not complied with, carrier liable for misrouting. *Lord & Bushnell Co. v. M. C. R. R. Co.* 463.

Suggested that, to avoid confusion, where property consigned to railroad consignee, contract of sale should provide that vendor or consignor should bear certain specified part of transportation charges, provided property is transported by a designated route or junction, but that if it is not so transported the entire transportation charges will be borne by vendor or consignor. In re Transportation of Company Material, 430 (441).

Shipment tendered to carrier without instructions as to routing. There was available an interstate and an intrastate route, the former being taken. No specific routing instructions having been given, defendant's duty was limited to forwarding shipment via cheapest available interstate route. *Willman & Co. v. St. L. I. M. & S. Ry. Co.* 405 (406).

Consignor specified a route in bill of lading and also designated a rate therein not applicable to the route named: *Held*, That initial carrier, having failed to obtain further and definite instructions before forwarding, is liable for damages resulting from misrouting. *Ludowick-Celadon Co. v. M. P. Ry. Co.* 588.

Where more than one route is available for forwarding a shipment, it is the duty of the carrier, in the absence of routing instructions, to forward it by the route taking the lowest rate. *Lord & Bushnell Co. v. M. C. R. R. Co.* 463.

Measure of damages for misrouting shipment billed to consignee carrier is not full division of rate, because it would have cost that carrier something to perform the haul. In re Transportation of Company Material, 430 (441).

Shipper gave instructions via route taking higher rate, which route carrier followed. No misrouting. *Humboldt Refining Co. v. M. K. & T. Ry. Co.* 363.

MIXED CARLOAD.

Complainant desired rule that, in mixed-carload shipments, if the aggregate charge upon the entire shipment on the basis of the mixed-carload rate exceeds the aggregate of the charge upon the shipment on the basis of a carload rate for one or more of the articles and the actual weight at the less-than-carload rate for the other articles, it be given benefit of lower charge. Rule prayed for denied. *Marion Iron & Brass Co. v. T. St. L. & W. R. R. Co.* 272.

Tariff provided for mixed carloads of grain only when all or all but one of each grain was sacked. Shipment of wheat and flaxseed made in one car, grains being separated by bulkhead. Charges on wheat having been made on basis of minimum carload, unjust to also charge on flaxseed on basis of minimum carload, but charges on latter should be less than carload rate on actual weight. *Lamb, McGregor & Co. v. C. & N. W. Ry. Co.* 346.

Complaint against failure to include boat spikes in list of articles taking rates on "railway track material" in mixed carloads not found justified. *McClung & Co. v. S. Ry. Co.* 582.

NAUTICAL MILES. SEE CONSTRUCTIVE MILEAGE.

NOTICE OF CHANGES IN RATES. SEE CHANGES IN RATES.

OILS.

Crude oil, as the name implies, is the natural oil as it comes from the wells.

It is said to be distinguishable from refined oils by its odor and different color. It is somewhat difficult to determine from the testimony precisely what commercial gas oil is, for the reason that it is a loose term, and oils, both refined and crude, are used for gas-making purposes, but chemically gas oil is a distillate of crude oil, some of the heavier or lighter constituents having been removed. *Sun Co. v. I. S. R. R. Co.* 194 (195).

Crude oil is sold on so close a margin that a slight difference in the price per gallon is sufficient to lose or secure the business. *Sun Co. v. I. S. R. R. Co.* 194 (196).

OUT-OF-LINE CHARGES.

Charges for necessary out-of-line service on shipments of grain and grain products from Omaha, Nebr., to Conway and Morrilton, Ark., with transit privilege at Little Rock, Ark., not found to be unreasonable or unduly prejudicial. *Brook-Rauch Mill & Elevator Co. v. St. L. I. M. & S. Ry. Co.* 249.

OVERCHARGES.

Retention as much a violation of act as granting rebate. Criminal prosecutions will follow unless voluntarily refunded when admittedly due. *Interstate Grain Co. v. C. & N. W. Ry. Co.* 34 (35).

OVERFLOW.

Under tariff, in order to obtain benefit of carload rate on actual weight of overflow, shipment must move under one bill of lading. Where a shipper issued two bills of lading, rule not applicable in terms, and carload rate must be applied on basis of minimum of car furnished for overflow. *Scudder v. T. & P. Ry. Co.* 60.

PACKING.

Under commodity tariff on different commodities, specifying various ratings depending upon the different manner of packing, there was no authority for the imposition of a commodity rate on the shipments in question because they were not packed in any manner specified. But, in view of amendment to tariff making method employed by complainants a species of packing entitling their commodities to commodity rates, and the similarity from transportation standpoint of the shipments with those packed in the manners formerly specified, complainants were charged unreasonable rates. *Republic Metalware Co. v. Erie R. R. Co.* 565; *Sidway Mercantile Co. v. L. S. & M. S. Ry. Co.* 570.

Charges may properly be made somewhat higher for transportation of showcases in crates than in boxes. Showcases ordinarily are composed largely of glass, or woods of value, held in place by metal or wooden beading. The risk of damage is greater when shipped in crates than in boxes. The hand-holds on either side of the box could be made by means of an extra strip as well as by the omission of a portion of the complete closure. *Wadell Show Case & Cabinet Co. v. M. C. R. R. Co.* 103 (107).

Upon interpretation of rule making higher rating on goods "crated" than "boxed," held complainant's shipments of showcases were not "boxed," but "crated," and should take higher rating. *Wadell Show Case & Cabinet Co. v. M. C. R. R. Co.* 103.

A barrel is a package, and brimstone in barrels would ordinarily be treated as package shipments, as distinguished from loose brimstone in bins; therefore, under the classification, must take a higher rating. *McLure Gormley King Co. v. Maine S. S. Co.* 108 (109).

PAPER RATE.

Upon petition for establishment of milling-in-transit and elevator allowances, it appears that there was no mill at that point, but that certain interests were anxious to build there if a satisfactory rate adjustment could be obtained. While Commission would not ordinarily be disposed to require publication of tariffs which could not be used, under certain circumstances, as in this case, privilege will be ordered in. *Suffern Grain Co. v. I. C. R. R. Co.* 178 (184).

PARKING.

Rate of 12½ mills per ton per mile not found unreasonable, since carrier has extra expense of \$5 per car per diem charge arising from necessity of "parking" cars in order to provide equipment for prompt forwarding. *Gamble-Robinson Commission Co. v. St. L. I. M. & S. Ry. Co.* 138 (140).

PARTY.

The law contemplates that an award of damages shall be made to the person actually damaged. Where the complainant does not appear to have suffered any injury, having no legal interest in an overcharge, Commission can make no award of reparation. *Lamb, McGregor & Co. v. C. & N. W. Ry. Co.* 346.

With only one carrier as party defendant, issue can not be broadened to embrace matters which were brought into existence by other carriers and for which defendant alone is in no sense responsible. *Chattanooga Feed Co. v. A. G. S. R. R. Co.* 480 (485).

Upon complaint attacking separately established part of through charge from Pittsburgh to Denver, Colo., not necessary to make lines east of Mississippi River parties. *Vulcan Iron Works Co. v. A. T. & S. F. Ry. Co.* 477 (479).

Complaint against rule 15 of Official Classification, strictly inter partes, dismissed because issues presented too broad and important to interests not parties. *Kleibacker v. L. & N. R. R. Co.* 420.

Commission merchant paid charges and charged up against consignor. *Held*, not entitled to damages for overcharge. *Lamb, McGregor & Co. v. C. & N. W. Ry. Co.* 346.

Complaint brought by successor to corporation who was the shipper. *Wood-Mosaic Flooring & Lumber Co. v. L. & N. R. R. Co.* 458.

PASSENGER FARES.

Fares on electric line between Washington, D. C., and Laurel, Md., considered, and in view of the facts shown of record, not found unreasonable. *Silvester v. City & Suburban Ry. of Wash.* 201.

Increase in fare from Washington, D. C., to Friendship Heights, Somerset, and Drummond, Md., held not justified. *Citizens of Somerset v. Washington Ry. & Elec. Co.* 187.

PAST RATES.

While existence of a wrong can not, of itself, justify its continuance, still, in determining what, under all the circumstances is just and reasonable, in pursuance of the authority delegated to the Commission, it must be to some extent guided by conditions as it finds them. *Bluefield Shippers' Assn. v. N. & W. Ry. Co.* 519 (525).

Maintenance of rate for eight years is a strong admission against carriers that higher rate would be unreasonable, unless explained. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (151).

Rates in effect without material change for many years and that fact is of weight in favor of view that they are reasonable. *Chattanooga Feed Co. v. A. G. S. R. R. Co.* 480 (484).

PAST RATES—Continued.

Long-standing system of rate not to be disturbed without considering effect upon property interests; but where such rate is unlawful it should be corrected. *Albree v. B. & M. R. R.* 303 (315).

History of rates under consideration reviewed for more than 10 years. *Maricopa County Commercial Club v. S. P. Co.* 429 (431).

PEAS.

Nearly one-third of the peas packed in the United States are packed in Wisconsin. *Empson Packing Co. v. C. M. Ry. Co.* 268 (269).

PERSONALITY OF SHIPPER.

A rate can not be confined in its terms or application to an individual or a class. *Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co.* 394 (397).

PLEADING.

Complaint as filed did not ask reparation; but at hearing request for leave to amend in that respect was noted in the record. Request not having been followed by an amendment, and there being no evidence touching specific shipments, that feature of the case not considered. *Atchinson v. St. L. I. M. & S. Ry. Co.* 131.

POINTS OFF LINE.

A line not serving a particular point can not be said to discriminate against such point in any rate adjustment where such adjustment is created by circumstances beyond the carrier's control, though it, as a connecting line, may participate in the rates imposed. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (416).

A carrier can not be said to discriminate against a point served by it because other carriers give lower rates to the same character of traffic from points on their own lines to a common destination. *Sunflower Glass Co. v. M. P. Ry. Co.* 391 (392).

To find a carrier guilty of discrimination as between competing points of origin, it must appear that such carrier participates at least in each of the movements between the two points of origin and the destination. *Maricopa County Commercial Club v. P. & E. R. R. Co.* 218 (22).

POLICY OF CARRIER.

A preference or advantage which is bestowed upon a city by the mere policy of the carrier and not by reason of actual difference in condition is undue. *In re Application of Southern Pacific Co.* 366.

POSTAGE-STAMP RATE.

It is by no means certain that postage-stamp rates, as applied to the distribution of the products of the Pacific Coast States, are not upon the whole for the general public good. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (156).

PRACTICE.

Upon investigation of a rate adjustment into and out of Durham, N. C., it is ordered that the defendant carriers be cited to show cause why their rates should not be reduced. *In re Divisions of Joint Rates on Coal*, 51 (59).

PREFERENCE.

Defendants applied from rival cement mills different rates for
in different "territories," but both were comparatively near each other,
and from a transportation standpoint were entitled to the same rate.
When general rate adjustments in and between large territories are made,
contemplate substantial justice between all shippers generally, rather than
individual instances of disproportionate inequality, though it may be
pose to that extent, and their strict observance in such cases.

PREFERENCE—Continued.

ground than the arbitrary theory of their existence should yield to the extent necessary to prevent gross injustice, just as many other rules are necessarily subject to exceptions. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 446.

Principle that where joint or proportional rates were made by all carriers leading to certain points of destination that it was within Commission's power to end discrimination as between points of origin by a reduction in the rate from the point discriminated against only has application where the traffic from both groups of origin is necessarily transported to destination by the same connecting carrier or carriers, and where it is possible for the delivering carriers to put an end to the discrimination by the exercise of their power to refuse to enter into preferential joint or proportional rates. *Ashland Fire Brick Co. v. S. Ry. Co.* 115 (120).

A railroad is justified, under the law, in discriminating in favor of one city as against another if they are so differently circumstanced that at one point transportation forces are brought into play which are not or can not be exercised at another point; but a carrier is not justified in deliberately adopting a policy of preference toward one city as against another. Only the preference or advantage that is due is justifiable, and that advantage which is bestowed upon a city by the mere policy of the carrier and not by reason of actual difference in conditions is undue. *In re Application of Southern Pacific*, 266.

If a particular line alone delivers at a point, participating in through routes and joint rates thereto from two points of production not directly served by its own line, it may not be a party to a preferential joint or proportional rate from either point of production. The test of the discrimination is the ability of one of the carriers participating in the two through routes from the two points of origin to the same point of destination to put an end to the discrimination by its own act. *Ashland Fire Brick Co. v. S. Ry. Co.* 115 (120).

Defendants contended that so long as rates from farther distant points were greater in the aggregate than those from shorter distance points, no claim of discrimination could arise. With this the Commission can not agree. Followed to its logical conclusion, carriers would have the right to completely nullify distance and give shippers far removed from consuming markets absolute control of prices in such markets as against shippers located near thereto. *Elk Cement & Lime Co. v. B. & O. R. R. Co.* 81 (88).

The duty imposed by law is to give equal treatment to all shippers who are in a position to deliver and it is not the right to reach competitive markets on unequal terms. Carriers are not required by law, and could not in fact be required, to equalize natural disadvantages, such as height or cost of production, and to do so, but they may not in any manner whatsoever make a preference of shippers entitled to equal treatment over another, or one locality over another. *Elk Cement & Lime Co. v. B. & O. R. R. Co.* 81 (88).

A railroad has no right under the pretext of a transfer which it does not require to furnish a grain dealer commercial elevation or, what amounts to the same thing, to pay through an elevation allowance for the commercial elevation of its grain, and if it does so it must accord the same privilege to all other persons and at other points. *Traffic Board v. Board of St. Louis v. B. & O. R. R. Co.* 161.

PREFERENCE—Continued.

Carriers may not select certain points of production on their lines and give to them the benefit of rates that permit meeting of competition of producers located upon other lines, and deny similar treatment to other producing points upon their lines that are similarly situated, and as to which the same and long-established general basis of rates applies. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (100).

Commission does not hold that rates beyond a common junction point from different points of origin must in every case increase in actual ratio, regardless of relative distances and other possible material considerations, but a substantial disparity in this regard imposes upon carriers the burden of justification by showing a dissimilarity of conditions from the favored section. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 446 (450).

Where certain carriers from a producing point and serving a consuming point are also parties to joint through rates to the consuming locality, but from other producing points, they may be held liable for undue preference, though their lines do not directly reach such other producing points. *Elk Cement & Lime Co. v. B. & O. R. R. Co.* 84 (89).

Permitting corn to be unloaded into elevators at Cairo, Ill., to be treated and shipped at balance of through rate, carrier paying to elevator company an allowance of $\frac{1}{2}$ cent per 100 pounds, but refusing to allow such privilege or make such allowance at Decatur, Ill., held unduly preferential. *Suffern Grain Co. v. I. C. R. R. Co.* 178.

A line not serving a particular point can not be said to discriminate against such point in any rate adjustment where such adjustment is created by circumstances beyond the particular carrier's control, though it, as a connecting line, may participate in rates imposed. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (416).

Carrier can not be said to discriminate against a point served by it because other carriers give lower rates to the same character of traffic from points on their own lines to the common destination. *Sunflower Glass Co. v. M. P. Ry. Co.* 391 (392).

Inability of complainant to reach markets on other lines owing to failure of defendant to grant it a milling-in-transit privilege on traffic destined to such other lines is not an undue discrimination for which the defendant is liable. *Plano Milling Co. v. St. L. S. W. Ry. Co.* 360 (362).

Rates to Memphis from main-line points on St. L. S. W. Ry. as far north as Bernie, Mo., and on Cairo and New Madrid branches of that line, found unreasonable and unduly preferential to St. Louis and East St. Louis. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.* 537.

A carrier may not perform a switching service for one plant and decline to perform it at a competing plant in the same general territory on the ground that it is more convenient to perform the service at the one plant than at the other, or because it has been customary to do it at one and not at another. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 540 (545).

The designation or the construction of an interchange track at one plant does not justify the carrier in refusing to perform at that plant the same service which it performs at a competing plant where such interchange has not been designated or provided. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 540 (545).

If rates complained of are shown by record to be unreasonable or discriminatory to any extent, it is the duty of Commission to so find, even though such finding may not give relief to full extent desired by complainants. *Chattanooga Feed Co. v. A. G. S. R. R. Co.* 480 (485).

PREFERENCE—Continued.

Where jobbing centers are situated near state lines, an advance of the interstate charge and the retention of the present charge on state shipments inevitably results in discrimination against the former. *In re Rates for Single Packages, etc.* 328 (335).

Carrier serving St. Louis with salt from Kansas field can not discriminate against such field because other carriers serving the Detroit producing field transport salt to St. Louis at lower rates. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (413).

Class rates from Sioux City, Iowa, to stations in southwestern Minnesota found unreasonable and reduced to present rates from St. Paul and Minneapolis to substantially equidistant stations in the same territory. *Sioux City Commercial Club v. C. & N. W. Ry. Co.* 110.

To find a carrier guilty of discrimination as between competing points of origin, it must appear that such carrier participates at least in each of the movements between the two points of origin and the destination. *Maricopa County Commercial Club v. P. & E. R. R. Co.* 218 (220).

Rate on coal from Coal Creek mines in Tennessee to Augusta, Ga., not found unduly prejudicial to the latter point in favor of rates from the same point of origin to other points in Georgia. *Chamber of Commerce of Augusta v. S. Ry. Co.* 223.

Rates on cottonseed from various points in the states of Missouri, Arkansas, and Louisiana to Memphis, Tenn., found to be unduly discriminatory in favor of St. Louis and East St. Louis. *Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co.* 548.

Contention that complaining locality has advantage in other territory naturally tributary to it is no answer to claim of inequitable rate from other localities. *Sioux City Commercial Club v. C. & N. W. Ry. Co.*, 110 (113).

Rates on cotton seed from points in Oklahoma to Memphis, Tenn., found to be unduly discriminatory against Memphis in favor of St. Louis and East St. Louis. *Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co.* 548.

Commission will not approve imposition by carriers of conditions which would benefit one or a few shippers and which might, and perhaps would, correspondingly injure many others. *McClung & Co. v. S. Ry. Co.* 582 (584).

Rates on lumber from southern producing points to Louisville, Ky., found prejudicial as compared with rates from equidistant points to Cairo, Ill. *Norman Lumber Co. v. L. & N. R. R. Co.* 239.

When competitive conditions make it imperative that some one must suffer, it is pertinent to inquire how the least injury may be inflicted. *Bluefield Shippers' Asso. v. N. & W. Ry. Co.* 519 (526).

Where carrier extends low rate in favor of one locality it may be required to accord similar treatment to another locality. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (411).

PREPAYMENT

Under the law and the long-established custom a carrier has the right to require prepayment of its charges, or to transport the freight and collect all of such charges on delivery thereof, or to accept part of the charges in prepayment and collect the remainder upon delivery. *In re Transportation of Company Material*, 439 (440).

PRIVILEGE.

Reconsignment privilege, where application of joint rate is secured, is not one to be demanded by the public as a matter of right, but it is a concession voluntarily granted by the carriers, but its application must be uniform. *Dietz Lumber Co. v. A. T. & S. F. Ry. Co.* 75 (76).

PRIVILEGE—Continued.

Milling in transit is a privilege to which shippers are not entitled as of right, and which will not be ordered established except in case of undue discrimination. *Plano Milling Co. v. St. L. S. W. Ry. Co.* 380 (362).

Milling in transit is a privilege which may be granted or withheld by carrier in its discretion so long as no unlawful discrimination results therefrom. *Young & Cutsinger v. L. & N. R. R. Co.* 1 (3).

PROFIT.

We can not undertake to establish freight rates which will insure production at a profit. *Florida Fruit Shippers' Asso. v. A. C. L. R. R. Co.* 11 (14).

Railway may not impose unreasonable rate merely because business of shipper is so profitable he can pay it. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (410).

PROPORTIONAL RATE.

Carrier can not maintain a proportional rate on traffic reaching its line via one or more specified routes and at the same time maintain a higher proportional rate on the same traffic from the same point of origin and destined to the same point of consumption that comes to it at the same point via the same connecting carrier, but over another route formed by different intermediate connecting carriers. *Rosenbaum Bros. v. L. & N. R. R. Co.* 62.

Commission orders establishment of certain carload and less-than-carload rates from Florida producing points to base points on pineapples and vegetables when destined for points beyond in other states. *Florida Fruit Shippers' Asso. v. A. C. L. R. R. Co.* 11.

While local and proportional rates are not ordinarily comparable, comparisons of such rates may be considered in connection with other evidence in determining reasonableness of particular rate. *Lindsay Bros. v. L. S. & M. S. Ry. Co.* 516.

Inland proportional rate on sugar from New Orleans or Port Chalmette, La., to Gramercy, La., not found unlawful. *In re Rates, etc., of Louisiana Ry. & Nav. Co.* 558.

Proportional rate applying to through traffic might well be lower than corresponding local rate. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (415).

Can not be accepted as standard of comparison with local rates. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 593 (602).

PROSPERITY OF SHIPPER.

Railway may not impose unreasonable rate merely because business of shipper is so profitable he can pay it. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (410).

PROTECTION.

Commission has no authority to correct tariff insufficiencies by the freight rate nor to protect, in that way, American against foreign producers. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (151).

PUBLIC POLICY.

In adjusting interstate rates on milk Commission has no jurisdiction to say what shall be done, as a matter of public policy, except in so far as the public weal must always be considered in exercising authority under the act. Duty of Commission is only to ascertain whether rates are in accordance with the act. *Albree v. B. & M. R. R.* 303 (319).

In all classifications, public policy must be considered. *In re Advances on Coal to Lake Ports*, 604 (623).

RAILROAD CONSIGNEE.

Suggested that, to avoid confusion, where property consigned to railroad consignee contract of sale should provide that vendor or consignor should bear certain specified part of transportation charges, provided transportation is via a designated route or junction, but that if it is not so transported the entire transportation charges will be borne by vendor or consignor. In re Transportation of Company Material, 439 (441).

Firms and individuals have an undoubted right to enter into contracts of purchase and sale under which the consignor pays an agreed portion of the transportation charges and the purchaser or consignee another portion of those charges. A carrier as a shipper has the same right. In re Transportation of Company Material, 439 (440).

Complaint for damages because of failure to carry out agreement to give complainant benefit of unpublished division of rate to fictitious billed destination, without merit. Conclusion not to affect rights of parties in courts under contract. Switzer Lumber Co. v. A. & M. R. R. Co. 471.

A carrier as a shipper over the lines of another carrier may not have any preference in the application of transportation rates and charges. Conversely, it may have the same privileges under the tariffs as any other shipper. In re Transportation of Company Material, 439 (440).

Measure of damages for misrouting shipment billed to consignee-carrier is not full division of rate, because it would have cost that carrier something to perform the haul. In re Transportation of Company Material, 439 (441).

RAW MATERIAL.

Sulphuric acid is strictly a raw material in the manufacture of fertilizer, and distinctly lower rates should be applied to its transportation than upon the manufactured fertilizer. International Agricultural Corporation v. L. & N. R. R. Co. 488 (493).

Rate on plain wire entering into manufacture of spring beds should take rate under that applicable to spring beds. Legget & Platt Spring Bed & Mfg. Co. v. M. P. Ry. Co. 513.

REASONABLE RATE.

A just and reasonable rate must be one which respects alike the carrier's deserts and the character of the traffic. The words "just and reasonable" imply the implication of good faith and fairness, of common sense and a sense of justice to a given condition of facts. They are not fixed, unalterable, mathematical terms. Their meaning implies the exercise of judgment. In re Advances on Coal to Lake Ports, 604 (624).

Rates can seldom be tested, even as to their reasonableness, strictly by themselves, but must be considered, to an extent, in reference to their environment. Southwestern Missouri Millers' Club v. M. K. & T. Ry. Co. 422 (427).

What is a reasonable rate can not, strictly speaking, be the subject of agreement between carriers and shippers, nor between carriers and this Commission. Arlington Heights Fruit Exchange v. S. P. Co. 149 (156).

Rate on coal from Coal Creek mines in Tennessee to Augusta, Ga., not found unreasonable in itself. Chamber of Commerce of Augusta, Ga., v. S. Ry. Co. 233.

The Commission is conscious that there is a considerable zone within which a rate may be held to be just and reasonable. In re Advances on Coal to Lake Ports, 604 (625).

RECONSIGNMENT.

Reconsignment privilege, whereby application of joint rate is secured, is not one to be demanded by the public as a matter of right; but it is a concession voluntarily granted by the carriers, and its application must be uniform. *Dietz Lumber Co. v. A. T. & S. F. Ry. Co.* 75 (76).

Limitation of privilege to first 48 hours after arrival of car not found unreasonable; in fact need of such limitation to prevent use of car for storage purposes recognized. *Dietz Lumber Co. v. A. T. & S. F. Ry. Co.* 75 (76).

REDUCTION OF RATE.

Carriers voluntarily reduced rate on fuel oil from Sapulpa, Okla., to Acme, Tex., to a figure which does not seem to be too low. Reparation awarded on shipments made under higher rates. *Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co.* 283.

Rate charged found unreasonable to extent it exceeded presently established rate. *Humboldt Refining Co. v. M. K. & T. Ry. Co.* 363.

REFRIGERATION.

Duty of carrier to furnish refrigeration "upon reasonable request" contemplates that it shall be paid for its service, and that sufficient traffic be offered to justify furnishing of refrigeration. *Albree v. B. & M. R. R.* 303 (322).

Doubt as to duty of carrier to furnish refrigeration removed by Hepburn amendment of 1906, which requires carriers to furnish it "upon reasonable request." *Albree v. B. & M. R. R.* 303 (322).

No ground upon which shipper who ships under ventilation could be required to help pay transportation charge of shipper who requires refrigeration. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (153).

REGULATIONS.

Carriers are required to make reasonable rules and regulations with respect to the interchange, exchange, and return of cars used upon through routes and for the operation of such through routes, and where they have failed in this respect the Commission is empowered to determine the individual or joint regulation or practice that is just, fair, and reasonable. *Missouri & Illinois Coal Co. v. I. C. R. R. Co.* 39.

RELATIVE RATES.

Rates must not only be reasonable in and of themselves, but they must be relatively reasonable. The duty imposed by law is to give equal treatment to all shippers who are in a position to demand it, and this includes the right to reach competitive markets on relatively equal terms. Carriers are not required by law, and could not in justice be required, to equalize natural advantages, such as location, cost of production and the like, but they may not in any manner whatsoever unduly prefer one set of shippers entitled to equal treatment over another or one locality over another. *Elk Cement & Lime Co. v. B. & O. R. R. Co.*, 84 (88).

When general rate adjustments in and between large territories, which contemplate substantial justice between all shippers generally, result in individual instances of disproportionate inequality, they fail in their purpose to that extent, and their strict observance in such cases upon no other ground than the arbitrary theory of their existence should yield to the extent necessary to prevent gross injustice, just as many other general rules are necessarily subject to exceptions. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 446.

RELATIVE RATES—Continued.

Commission does not hold that rates beyond a common junction point from different points of origin must in every case increase in actual ratio regardless of relative distances and other possible material considerations, but a substantial disparity in this regard imposes upon carriers the burden of justification by showing a dissimilarity of conditions from the favored section. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 446 (450).

Complainant contends that the official classification ratings are unjust and unreasonable in comparison with those in the southern and western classifications. A comparison of the ratings in the different classifications is by no means a guide to the relative transportation charges unless the class rates under the several classifications are also considered. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 93 (102).

Advances in coal rates from certain Illinois mines to Chicago found to be reasonable and justified, by the showing of defendants that the advance was made to equalize the rates from other nearby mines, and that the rate as advanced is not unreasonable in itself. *In re Advances on Bituminous Coal*, 341.

Rates on brick, in carloads, from Kansas gas belt to Lewis, Marne, Oakland, Shelby, and Walnut, Iowa, found unreasonable so far as they exceed contemporaneously established rates from the same points of origin to Mississippi River territory. *Sunderland Bros. Co. v. M. P. Ry. Co.* 141.

When it appears that a carrier gives to one point substantially lower rates for substantially the same service than it accords to a competing point, those comparisons are forceful, and in the absence of mollifying conditions might well be considered conclusive. *Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co.* 548 (555).

Rates on window glass from Kansas field to upper Mississippi River crossings compared with rates on same commodity from eastern points of manufacture to the same points of destination. *Sunflower Glass Co. v. M. P. Ry. Co.* 391.

No justification from a transportation standpoint for the maintenance of rates on stave and heading bolts to Paducah, Ky., higher than the rates for similar distances between local points on defendant's line. *Paducah Coopetage Co. v. N. C. & St. L. Ry. Co.* 226.

While local and proportional rates not ordinarily comparable, comparisons of such rates may be considered in connection with other evidence in determining reasonableness of particular rate. *Lindsay Bros. v. L. S. & M. S. Ry. Co.* 516 (517).

It is well understood that the general level of rates in Central Freight Association territory, east of the Mississippi River, is very much lower than that prevailing in territory west of that river. *Sunflower Glass Co. v. M. P. Ry. Co.* 391 (392).

Rates on wheat and products from Joplin group to Little Rock territory found unreasonable as compared with rates from Southern Illinois and from northern part of Kansas City group. *Southwestern Missouri Millers' Club v. M. K. & T. Ry. Co.* 422.

Interstate rate, consisting of combination, one factor of which was higher than State rate between same points, not held unreasonable where State rate under protest. *Gamble Robinson Commission Co. v. St. L. I. M. & S. Ry. Co.* 138.

Lower rates, which are forced by water competition, can not be accepted as a measure of reasonableness of rates from points where such competition does not exist. *South Atlantic Waste Co. v. S. Ry. Co.* 203 (206).

RELATIVE RATES—Continued.

Rate on coal from Coal Creek mines in Tennessee to Augusta, Ga., not found relatively unreasonable as compared with rates from the same point of origin to other points in Georgia. *Chamber of Commerce of Augusta v. S. Ry. Co.* 233.

Rates on lumber from southern producing points to Louisville, Ky., found relatively unreasonable as compared with rates from equidistant points to Cairo, Ill. *Norman Lumber Co. v. L. & N. R. R. Co.* 239.

Export rate from Elder, Kans., to New Orleans, La., on flour in carloads found unreasonable as compared with similar rates from competitive milling points. *R. R. Com. of Kans. v. M. P. Ry. Co.* 24.

Rates on live stock from producing territory to Fort Worth, Oklahoma City, and Wichita, and on packing-house products and fresh meats from those points, prescribed. In re *Investigation of Rates on Meats*, 160.

The fact that a certain rate is in effect via the lines of one carrier is not of itself proof of unreasonableness of a higher rate via a competing line. *McLean Lumber Co. v. L. & N. R. R. Co.* 349 (352).

Rates on fresh meats and packing-house products from Houston, Tex., to Lake Charles, La., compared with rates from Fort Worth, Tex. *Houston Packing Co. v. T. & N. P. R. R. Co.* 456.

Rates on live stock from Phoenix, Ariz., to Los Angeles, compared with rates from other sections to Los Angeles. *Maricopa County Commercial Club v. S. P. Co.* 429 (430).

Rates from Minneapolis to Denver should be the same as from St. Louis to Denver. *Minneapolis Traffic Asso. v. C. B. & Q. R. R. Co.* 259.

General level of rates east of St. Louis much lower than that in territory to the west. *R. R. Com. of Kans. v. A. T. & S. F. Ry. Co.* 407 (415).

RESHIPPING RATES.

There is no substantial difference between a "reshipping" rate and what is known as a "proportional" rate. We have held that proportional rates are not per se unlawful, and we see no reason to condemn "reshipping" rates, as such, upon the present record. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 596 (600).

RETROACTIVE TARIFFS.

Commission will not authorize or permit the retroactive application of a transit privilege voluntarily established by a carrier, except for the purpose of removing a discrimination. *Wood-Mosaic Flooring & Lumber Co. v. L. & N. R. R. Co.* 458.

REVENUES.

Necessitous circumstances in which defendant finds itself as a result of events not connected with the Pittsburgh lake-coal traffic can not be accepted as the measure of reasonableness of a rate to be imposed upon that traffic. *Boileau v. P. & L. E. R. R. Co.* 640 (655).

In considering the reasonableness of a whole schedule of rates the Commission may well at the outset make inquiry as to the general financial condition of the defendant railroad. *R. R. Com. of Nev. v. N. C. O. Ry. Co.* 205 (210).

RISK.

Charge may properly be made somewhat higher for transportation of show cases in crates than in boxes. Show cases ordinarily are composed largely of glass or woods of value, held in place by metal or wooden beading. The risk of damage is greater when shipped in crates than in boxes. *Wadell Show Case & Cabinet Co. v. M. C. R. R. Co.* 106 (107).

ROUTE.

Where a reasonably satisfactory route on transcontinental business to points in Oregon is afforded by carrier serving those points via short lines, another route will not be opened via a much more circuitous line controlled by the direct lines and which formerly were competitors. *Glie & Co. v. U. S. P. Co.* 258.

It can not be denied that the cost of transportation is a potent factor in determining the route which traffic will take. If confronted by increased rates via routes over which it has been accustomed to move, it will naturally seek other outlets. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.* 526; (534).

Lower rate via longer route no measure of reasonableness, in absence of other evidence, of higher rate via shorter route. *Carstens Packing Co. v. U. S. P. R. R. Co.* 8 (10).

RULES.

Where conflicting rules which affect the rate are published effective on the same date in separate tariffs by the same carrier, the rule which will result in application of lower rate is one which is lawfully applicable to traffic to which such rules apply. *Badenoch Co. v. C. & N. W. Ry. Co.* 38.

Provision in southern classification which limits the rating upon scrap iron does not require that bridge material be broken into pieces before it is entitled to the scrap-iron rate. *Continental Iron & Steel Co. v. L. & N. R. R. Co.* 281.

Rule requiring statement of relationship of person receiving payment of claims to corporation in whose favor voucher is made, while within jurisdiction of Commission, not found unlawful. *Bewaber Co. v. U. S. P. R. Co.* 146.

SALT.

Salt is very desirable traffic from a transportation standpoint. It loads heavily, is not liable to loss or damage in transit, can be handled at the convenience of the carrier, and affords a uniform business. Its value is comparatively little, being from \$1.50 to \$2.00 per ton. While not consumed as largely as other commodities, and while therefore the freight is an article of universal and necessary consumption, it calls for a low rate of transportation. *F. & M. Ry. Co.* 407 (410).

SCRAP IRON.

Provision in southern classification which does not require that bridge material be broken into pieces before it is entitled to the scrap-iron rate. *Continental Iron & Steel Co.* 281.

SHORT NOTICE PERMISSIONS. See CHARTERS AND PERMITS.

Commission has power to order installa-
tion of tracks. *Ralston Township Co. v. M. & E. Ry. Co.* 100.

SIGNING VOUCHERS. See CLAIMS.**STATE AND FEDERAL.**

Where jobbing centers are situated, the state charge and the retail charge inevitably results in a difference. *Single Packages.* 328.

STATE RATES.

State rates afford standards of comparison of greater or less value according as they appear reasonable, especially so when acquiesced in by the carriers; but when State rate under protest and being contested, and it appears unreasonably low, not valuable as comparison. *Willman & Co. v. St. L. I. M. & S. Ry. Co.* 405.

Where under protest, comparison of State rate with interstate rate unavailing. *Gamble-Robinson Commission Co. v. St. L. I. M. & S. Ry. Co.* 138 (140).

In fixing the interstate rate for Oklahoma City we can not be governed by the State tariff unless in our opinion it is just and reasonable. In re *Investigation of Rates on Meats*, 160 (164).

In view of litigation pending as to Arkansas state rates, Commission will not take such rates as measure of interstate rates. *Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co.* 548 (555).

STATE TRAFFIC. See also INTERSTATE COMMERCE.

That part of a continuous haul from a foreign country which is confined to a rail transportation from a port of entry to a point in the same State is within the jurisdiction of the Commission though the shipment does not move under through billing nor do the water and rail lines operate under any common control or management. In re *Rates, etc., of Louisiana Ry. & Nav. Co.* 558.

STAVE BOLTS.

Stave bolts are pieces of timber, ordinarily of oak, from which barrel staves are manufactured. To produce the stave bolt a log is cut to the proper length, about 36 inches. Sometimes before shipment the log is quartered and the bark removed, while at other times the stave bolt differs from a log only in that it is shorter. Heading bolts are somewhat shorter than stave bolts. About two-thirds of the stave and heading bolt is lost in the process of manufacture. It is said that one cord of oak bolts contains approximately 1,100 feet, board measure, weighs 5,600 pounds, and produces about 600 staves, which weigh about 1,800 pounds. *Paducah Cooperage Co. v. N. C. & St. L. Ry. Co.* 226.

STORAGE CHARGES.

Can not begin to accrue until freight has been tendered under such circumstances that consignee is legally obliged to receive the same. If marks on shipment have been so obliterated through negligence of defendant that property can not be identified, complainant under no legal obligation to take what might and what might not be its property. *Kilburn Mills v. N. Y. N. H. & H. R. R. Co.* 21 (22).

STREET RAILWAYS.

Complainants, who reside on the electric line between Washington, D. C., and Laurel, Md., attack the schedule of single fares and monthly commutation fares established by the defendants for transportation between points on the line in Maryland and the city of Washington, D. C.; *Held*, that, upon the record, said fares are not shown to be unreasonable. *Silvester v. City & Suburban Ry. of Wash.* 201.

Are common carriers by railroad within the meaning of the act, and when engaged in interstate commerce are subject to the jurisdiction of this Commission. *Citizens of Somerset v. Washington Ry. & Elec. Co.* 187 (189).

SUPPLEMENTS TO TARIFFS. See TARIFFS.

SWITCH CONNECTION.

Power of Commission to require switch connection not founded upon any contractual relationship existing between carriers and those entitled to invoke the benefit of the statute, and Commission is without jurisdiction to compel defendant to specifically perform a contract in respect thereto or to award damages for the breach thereof. *Ralston Townsite Co. v. M. P. Ry. Co.* 354 (355).

Commission no power to order installation of sidetrack; its function is limited to determination of questions concerning switch connections with existing sidetracks. *Ralston Townsite Co. v. M. P. Ry. Co.* 354 (356).

SWITCHING CHARGES. See also ABSORPTION OF SWITCHING CHARGES.

Under tariffs, carriers agree to switch, upon order of consignee, cars loaded with grain consigned to Chicago. Transportation service not ended until cars are given terminal delivery directed by consignee. It follows that switching service does not constitute a local transaction subject to the laws of Illinois, but that charges are subject to the act. *Badenoch Co. v. C. & N. W. Ry. Co.* 36 (37).

Under conflicting tariffs, Commission holds carriers under obligation to switch, free of charge, cars held for delivery upon consignee's order. *Badenoch Co. v. C. & N. W. Ry. Co.* 36.

Refusal to deliver until switching charges were paid. *Edison Portland Cement Co. v. D. L. & W. R. R. Co.* 382.

SWITCHING SERVICE.

A carrier may not perform a switching service for one plant and decline to perform it at a competing plant in the same general territory on the ground that it is more convenient to perform the service at the one plant than at the other, or because it has been customary to do it at one and not at another. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 540 (545).

The designation or the construction of an interchange track at one plant does not justify the carrier in refusing to perform at that plant the same service which it performs at a competing plant where such interchange has not been designated or provided. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 540 (545).

TARIFF ACTS.

Commission has no authority to correct tariff insufficiencies by the freight rate, nor to protect, in that way, the American against the foreign producers of fruit. *Arlington Heights Fruit Exchange v. S. P. Co.* 149 (151).

TARIFFS.

Rule 8 (a) Tariff Circular No. 18-A, directing that if a supplement to a tariff is issued which conflicts with a part of a previous supplement, which is not thereby canceled in full, that such newly issued supplement should specifically state the portion of the previous supplement intended thereby to be canceled; *Held*. To apply to successive supplements to the same tariff, as well as to other and different tariffs. *Veitch v. S. A. L. Ry.* 4.

Where conflicting rules which affect the rate are published effective on the same date in separate tariffs by the same carrier, the rule which will result in application of lower rate is one which is applicable to traffic to which such rules apply. *Badenoch Co. v. C. & N. W. Ry. Co.* 36.

Where an initial carrier publishes and maintains one joint tariff, which is not properly concurred in by its connections, and at the same time another joint tariff naming higher rates which is properly concurred in, the latter is the legal rate and must be applied. *Kennedy & Co. v. St. L. & W. Ry. Co.* 277.

TARIFFS—Continued.

Incidental service performed by carriers at transshipment ports, such as dumping and trimming or leveling, should be covered by tariff provisions and filed with the Commission. *New England Coal & Coke Co. v. N. & W. Ry. Co.* 398 (404).

A joint rate over several lines not concurred in by such connecting lines is in direct contravention of the rules of the Commission made under section 6. *De Camp Bros. & Yule Iron, Coal & Coke Co. v. V. & S. F. Ry. Co.* 274 (276).

Carriers can not lawfully depart from terms of their tariffs to meet emergencies that arise in the affairs of their patrons. *Dietz Lumber Co. v. A. T. & S. F. Ry. Co.* 75 (76).

Electric line engaging in transportation between Washington, D. C., and Laurel, Md., must file and post its tariffs. *Silvester v. City & Suburban Ry. of Wash.* 201.

A rate between two points in a state to be applicable to a shipment beyond out of the state must be filed with this Commission. *Johnson v. M. St. P. & S. S. M. Ry. Co.* 255 (257).

TERMINAL SERVICE. See **SWITCHING CHARGE.**

TERRITORY.

Since no order of the Commission reducing rates between points in Arizona could become effective before the territory became a state, determination of rates left to the state. *Maricopa County Commercial Club v. M. & P. R. R. Co.* 279.

THROUGH AND LOCAL.

Through interstate rate, made up of combination, while higher than combination over same route one factor of which was a state rate, not found unreasonable. *Gamble-Robinson Commission Co. v. St. L. I. M. & S. Ry. Co.* 138.

Rates from eastern points to Yuma, Ariz., which exceed combination on Los Angeles, Cal., a farther distant point, found unreasonable. *Sanguinetti v. I. C. R. R. Co.* 185.

THROUGH RATES.

A through rate may properly be less than the sum of the locals, although the cost of the service is the same, if the lower through rate is forced by competition which does not affect the local rates. *R. R. Com. of Nev. v. N. C. O. Ry. Co.* 205 (210).

Cancellation, leaving high combination of locals, unreasonable. *Maricopa County Commercial Club v. P. & E. R. R. Co.* 221.

THROUGH ROUTE.

The fact that through tickets are not used or through rates paid does not prove the transportation to be other than interstate. A through route exists over which passengers are actually transported by continuous carriage, and the fact that joint rates or fares may not now be in force does not prove that the transportation is not interstate in character. *Citizens of Somerset v. Washington Ry. & Elec. Co.* 187 (191).

Railroads of the country are called upon to so unite themselves that they will constitute one national system; they must establish through routes, keep those routes open and in operation, furnish necessary facilities for such transportation, make reasonable and proper rules of practice as between themselves and the shippers, and as between each other. *Missouri & Illinois Coal Co. v. I. C. R. R. Co.* 39.

